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IN THE

# Supreme Court of the United States

October Term, 1968

No. [redacted] 120

EX PARTE, IN THE MATTER OF THE PETITION OF THE BALTIMORE COUNTY WELFARE BOARD, A MUNICIPAL AGENCY, FOR GUARDIANSHIP WITH RIGHT TO ADOPTION OF A MINOR.

ANTHONY F. PALMISANO,
LYDIA MAE PALMISANO,
MADONNA AGATHA HALE,

*Petitioners,*

*vs.*

BALTIMORE COUNTY WELFARE BOARD,

*Respondent.*

**Petition for Writ of Certiorari to the Court of Appeals of Maryland.**

LOUIS PEREGOFF,
1800 N. Charles Street,
Suite 46A,
Baltimore, Maryland 21201,
*Counsel for Petitioners.*

THE PAUL M. HARROD CO. TOWSON, MD. 21204 825-6100

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EX PARTE, IN THE MATTER OF THE PETITION OF THE BALTIMORE COUNTY WELFARE BOARD, A MUNICIPAL AGENCY, FOR GUARDIANSHIP WITH RIGHT TO ADOPTION OF A MINOR.

ANTHONY F. PALMISANO,
LYDIA MAE PALMISANO,
MADONNA AGATHA HALE,

*Petitioners,*

*vs.*

BALTIMORE COUNTY WELFARE BOARD,

*Respondent.*

## Petition for Writ of Certiorari to the Court of Appeals of Maryland

Anthony F. Palmisano, Lydia Mae Palmisano and Madonna Agatha Hale respectfully pray that a writ of certiorari issue to review the judgment of the Court of Appeals of Maryland entered in this cause on February 23, 1968.

### Opinion Below.

The opinion rendered by the Court of Appeals of Maryland on February 23, 1968, affirming the judgment of the Circuit Court of Baltimore County, Maryland refusing to set aside an order appointing the Respondent as guardian of the infant child Madonna Peggy Hale and granting Respondent the right to consent for adoption is reported at 238 A2d (Md.) 251.

## Jurisdiction

The judgment of the Court of Appeals of Maryland was entered on February 23, 1968 (Appendix A herein).

The jurisdiction of this Court is invoked under 28 U.S.C., 1257(3) in that the Maryland Courts in upholding the validity of the Maryland Statute, Article 16, Section 74 have held that an infant under the age of 18 may consent to the appointment of a guardian of her child with consent to adopt without due notice to the natural parents of said infant, and under the same section, that the Maryland Courts in upholding Rule D–75 (a) of the Maryland Rules of Procedure have held that a guardian *ad litem* supercedes the natural guardianship of the natural parents of the minor mother whether said natural parents are fit or not, and under the same section because Petitioners were deprived of certain rights without due process of law, contrary to the Constitution of the United States.

## Questions Presented.

1. Whether due process of law requires notice to the parents and natural guardians of a minor mother living with said parents before the minor mother can consent to the appointment of a legal guardian with the right to consent to the adoption of her illegitimate child.

2. Whether a state statute, as construed by the state courts, which allows a guardian *ad litem* for a minor mother to supercede the rights of natural parents and guardians without a determination that the natural parents and guardians are unfit, is repugnant to due process of law.

## Constitutional and Statutory Provisions Involved.

The constitutional provision involved in the due process clause of the Fourteenth Amendment to the Constitution of the United States.

The state's statutes involved are Article 16, Section 74 (h) of the Annotated Code of Maryland, 1957 edition, as amended, which states on page 88 of the 1966 replacement volume as follows:

> "Minority of a natural parent shall not place such parent under a disability in adoption or guardianship with the right to consent to adoption proceedings and such parent, if he has attained the age of eighteen (18) years, may give a valid consent to adoption or guardianship with the right to consent to adoption and/or join as a party in such proceedings and shall be considered *sui juris* and no adoption or guardianship with right to consent to adoption shall be invalidated because of the minority of a natural parent."

Together with Rule D–75 (a) of the Maryland Rules of Procedure as cited in the Annotated Code of Maryland, 1957 edition, volume 9B, at page 382 of the 1963 replacement volume which states:

> "a. *Parent under disability–guardian ad litem.*
>
> If a parent whose child is to be adopted, or for whom a guardian with the right to consent to adoption is to be appointed, is a person under disability, the court shall appoint a guardian *ad litem* for such period after services of the show cause order as required by Rule D–74 (Notice). The guardian *ad litem* shall be a member of the bar, or other responsible and disinterested person, who shall investigate the facts of the case and report his findings to the court in writing; if such parent has consented to the proceedings, it shall only be necessary for the guardian to investigate and report to the court whether such parent understands the legal effect of the proceeding and consents thereto."

## Statement of the Case.

Your co-petitioner, Madonna Agatha Hale was born Madonna Agatha Palmisano on March 26, 1947. On May 28, 1964, when your co-petitioner was seventeen years of age, she gave birth to an illegitimate child, Madonna Peggy Hale, in Harford Memorial Hospital, Havre de Grace, Maryland. At the time of the birth of the child, your co-petitioner, Madonna Agatha Hale, withheld knowledge of the birth of her illegitimate child from her parents, your co-petitioners, Anthony F. Palmisano and Lydia Mae Palmisano, with whom she had been living since childhood. It is admitted that the grandparents, your co-petitioners, knew nothing of the birth of the illegitimate child until December 15, 1965, long after the acts herein complained of had been perpetrated.

On July 13, 1964, your co-petitioner, Madonna Agatha Hale, signed a release of parental rights to the Baltimore County Welfare Board without the knowledge and consent of her natural parents and guardians, your co-petitioners, Anthony F. Palmisano and Lydia Mae Palmisano. Ex parte proceedings were instituted by the Welfare Board of Baltimore County, Maryland on September 10, 1964 in the Circuit Court for that county, in which the board asked to be named as the legal guardian of the child with the right to consent to its adoption and asked that guardian *ad litem* be appointed for your co-petitioner, Madonna Agatha Hale.

On the same day, the Circuit Court of Baltimore County appointed John B. Farrell, a probation officer of Baltimore County, as guardian *ad litem.* Also, on the same day, the Circuit Court of Baltimore County issued an order directing your petitioners to show cause on or before October 15, 1964 why the *adoption* should not be decreed. Still on the same day, the appointed guardian *ad litem,* interviewed your

co-petitioner, Madonna Agatha Hale, once, for a period of twenty minutes during most of which time, the Welfare Board worker, Mrs. Genevieve Parlett, was present.

That afternoon, Mr. Farrell as guardian *ad litem* filed his answer to the show cause order, reciting that he had advised your co-petitioner, Madonna Agatha Hale, of her rights concerning the relinquishing of her child for adoption and the finality of her decision once an adoption decree had been signed.

He did not tell the petitioner that she had until October 15, 1964 to object to the appointment of the welfare board as guardian; did not tell her that her parental rights cease when a guardian is appointed; did not tell her that after appointment, the guardian alone has the right to consent to the child's adoption, and did not tell her that she would not be allowed to see her child after the decree appointing a guardian was signed.

A decree was entered on October 20, 1964, appointing the Baltimore County Welfare Board legal guardian with the right to consent to the adoption of the illegitimate child. No notice of the petition for guardianship or the appointment of John B. Farrell as guardian *ad litem* was ever served on your co-petitioners, Anthony F. Palmisano and Lydia Mae Palmisano. On December 15, 1965, your co-petitioner, Madonna Agatha Hale, now eighteen years of age, filed in the Circuit Court of Baltimore County, together with your co-petitioners, Anthony F. Palmisano and Lydia Mae Palmisano, a motion to strike the order of October 20, 1964 appointing the Baltimore County Welfare Board as guardian. After hearing, the motion was denied, upon which your petitioners appealed to the Court of Appeals of Maryland. That honorable court, after argument, sustained the ruling of the Circuit Court of Baltimore County.

Your petitioners seek the issuance of a writ of certiorari to review the judgment of the Court of Appeals of Maryland.

**How Federal Questions Are Presented.**

In your petitioners' initial motion to strike the order of October 20, 1964, appointing the Baltimore County Welfare Board legal guardian with the right to consent to adoption of the minor child of your co-petitioner, Madonna Agatha Hale, filed on December 15, 1965 in the Circuit Court for Baltimore County, your petitioners stated in Paragraph III, "that on the 13th day of July, 1964, a release of the parental rights was secured from Madonna Agatha Hale, by the Baltimore County Welfare Board through one of its functionaries, Genevieve W. Parlett, which release was subsequently filed herein as an exhibit for authority to obtain legal guardianship with right to consent to adoption. . . .and that such release of parental right is invalid and nugatory and was and is hereby revoked and repudiated by petitioners herein," and further stated in Paragraph IV, ". . .that the appointment of the guardian *ad litem* was in violation of Article 72A, Section 1, which states that a guardian *ad litem* may be appointed for a minor child only where the *parents are unsuitable*, or the child's interests would be adversely affected by remaining under the natural guardianship of its parent or parents; for in this case no investigation was made or hearing held to determine whether they were in fact unsuitable, or that the child's interests would be adversely affected," and further, in Paragraph VII, "that the Petition for Legal Guardianship with the right to consent to adoption filed herein is invalid and nugatory:. . .(c) For that no valid consent to a legal guardian with right to consent to adoption was given by Madonna Agatha Hale who at the time of the filing of the petition for legal guardianship with right to consent to adoption had not attained the age of eighteen years as required under Article 16, Section 74, of the Annotated

Code of Maryland. (1) For that your petitioners, Anthony F. Palmisano and Lydia Mae Palmisano were at all times available to process but were denied their parental rights and duties to comfort and guide their minor daughter, Madonna Agatha Hale, in an hour of her greatest need, in violation of their constitutional rights and of due process of law, And further, in Paragraph VIII, "That your petitioners, Anthony F. Palmisano and Lydia Mae Palmisano, although being the natural parents and guardians of the aforesaid, Madonna Agatha Hale, and necessary and essential parties to these proceedings were willfully kept in ignorance of the sequence of events, and immediately upon discovering the facts, requested and authorized their attorneys, Edward Angeletti and Louis Peregoff, to file this Motion on behalf of themselves and their daughter, Madonna Agatha Hale."

The trial court failed to rule on any of the issues raised by the petitioners as to the constitutional questions presented in their motion to strike and based its final decree solely on whether your petitioners had produced clear and convincing proof that the consent signed on July 13, 1964 by Madonna Agatha Hale was invalid and legally ineffective and whether the petitioners produced clear and convincing proof that she did not understand the legal affect of this proceeding (Appendix B). But the court did not reach beyond the determination of these factual questions.

That your petitioners preserved the constitutional questions in a brief filed by your petitioners in the Court of Appeals of Maryland specifically referring, under the second question thereof, as to whether a minor mother, as herein, could legally sign a consent for adoption placement without approval of her natural parents and guardians, your co-petitioners, Anthony F. Palmisano and Lydia Mae Palmisano.

The Maryland Court of Appeals failed to rule specifically on the constitutional questions as presented by your petitioners but construed the statutes herein concerned to mean, and interpreted them so as not to require that notice must be given to the natural parents and guardians of the minor mother, despite the fact that there was no showing that said parents of the minor mother are unfit.

**Reasons for Granting the Writ.**

**1. CO-PETITIONER, MADONNA AGATHA HALE, A MINOR, WAS DEPRIVED OF DUE PROCESS OF LAW WHEN THE CIRCUIT COURT OF BALTIMORE COUNTY APPOINTED THE BALTIMORE COUNTY WELFARE BOARD AS THE LEGAL GUARDIAN OF HER ILLEGITIMATE CHILD WITH THE RIGHT TO CONSENT TO ITS ADOPTION WITHOUT THE KNOWLEDGE AND CONSENT OF HER NATURAL PARENTS AND WITHOUT ANY NOTICE TO THEM OF THE PROCEEDINGS, AND ALTHOUGH CO-PETITIONER, MADONNA AGATHA HALE, HAD SINCE HER BIRTH LIVED WITH AND HAD BEEN SUPPORTED AND MAINTAINED BY HER NATURAL PARENTS.**

The legislative policy of the State of Maryland regarding the relationship of parent and child is clearly set forth in the *Annotated Code of Maryland (1957), Article 72A, paragraph 1,* as follows:

> "The father and mother are the joint natural guardians of their minor child and are jointly and severally charged with its support, care, nurture, welfare and education. They shall have equal powers and duties, and neither parent has any right superior to the right of the other concerning the child's custody. If either the father or mother dies, or abandons his or her family, or is incapable of acting, the guardianship devolves upon the other parent. Where the parents live apart, the court may award the guardianship of the child to either of them. Provided: The provisions of this article shall not be deemed to affect the existing law relative to the appointment of a third person as

> guardian of the person of the minor where the parents are unsuitable, or the child's interests would be adversely affected by remaining under the natural guardianship of its parent or parents."

The right to function as *parens patriae* is not an invitation to procedural arbitrariness or to deny due process of law. See *Kent v. U.S., 383 U.S. 541, 16 L. Ed 2d. 84.*

Before depriving the child-mother of her legal right to the guidance, protection and counsel of her parents with whom she had at all times lived, appropriate notice should have been served upon her parents informing them of the proceedings.

In *Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306,* the Supreme Court reminded us of the rule of due process, stating that for judicial finality, notice must be given which is, "reasonably calculated under all the circumstances, to apprise interested parties of the action and afford them an opportunity to present their objections."

The Maryland Courts herein have failed to observe the most fundamental requirements of due process, for as Mr. Justice Fortas stated in *In Re Gault, 387 U.S. 1:*

> "Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the power which the State may exercise . . .
>
> "Due process of law requires notice of the sort we have described—that is, notice which would be deemed constitutionally adequate in a civil or criminal proceeding. It does not allow a hearing to be held in which a youth's freedom and his parents' right to his custody are at stake without giving them timely notice in advance of the hearing of the specific issues they must meet. Nor, in the circumstances of this case can it reasonably be said that the requirement of notice was waived."

See also *Armstrong v. Manzo,* infra.

To further quote Mr. Justice Fortas,

> "In *Kent v. U.S.*, supra, we stated that the Juvenile Court judges' exercise of the power of the State as *parens patriae* was not unlimited. We said that the admonition to function in a parental relationship is not an invitation to procedural arbitrariness."

There is no place in our system of law for reaching a result of such tremendous consequences by means of the star chamber proceedings herein, proceedings which lack the essentials of due process and fair treatment. See *Kent v. U.S., supra.*

The Fourteenth Amendment's concept of substantive due process protects the parent-child relationship from unwarranted governmental intrusion. See *Meyer v. State of Nebraska, 262 U.S. 390, 67 L. Ed 1042, 1045; Pierce v. Society of the Sisters, 268 U.S. 510, 534-535, 69 L. Ed 1070, 1078; Prince v. Commonwealth of Massachusetts, 321 U.S. 158, 168, 88 L Ed. 645, 652; Lacher v. Venus, 177 Wis. 558, 188 N.W. 613, 617.* The Amendment is also construed to protect the right of a natural parent to procedural due process where the custody or adoption of its child is being litigated. See *May v. Anderson, 345 U.S. 528, 533, 534, 97 L Ed 1221, 1226-1227; Armstrong v. Manzo, 380 U.S. 545, 550, 551, 14 L. Ed. 2d. 62, 66.*

The words of Mr. Justice Stewart, in his dissenting opinion on other grounds in *In re Gault, supra,* are noteworthy:

> "Similarly, due process clearly requires timely notice of the purpose and scope of any proceedings affecting the relationship of parent and child. *Armstrong v. Manzo, 380 U.S. 545, 85 S. Ct. 1187, 14 L Ed. 2d 62."*

Mr. Daniel Webster once said, "The most important thought I ever had was my responsibility to God."

We are given the choice between good and evil. Would God have snatched this baby, Madonna, from the bosom of her family under the circumstances of this case? From a distraught 17-year old mother, for whom the trial court herein lacked the compassion and understanding to consult with her natural parent and guardian who had nurtured her since birth? From her natural grandparents who were completely unaware of her existance? From those same natural grandparents who immediately upon being informed of the heartbreak of their daughter instituted these proceedings on her behalf and on behalf of themselves?

The questions answer themselves!

Judge Finan, speaking for the Court of Appeals of Maryland refers to the child-mother as one who, "in desperation" surrendered her child for adoption to a public agency, yet paradoxically enough concludes his opinion with the statement that the child-mother, "knowingly and intelligently consented to the adoption."

Counsel notes for this August Tribunal's attention that no "adoption" proceedings are involved herein but only a petition to strike down a decree for the appointment of a legal guardian for an infant with the right to consent to its adoption.

The Court of Appeals of Maryland divests itself of any responsibility toward the child-mother's natural parents and blandly ignores their natural and human right to have guided and counseled their daughter.

The decision of the Court of Appeals of Maryland on the face of its opinion not only violated Petitioners' right of due process of law under the Fourteenth Amendment of the Constitution of the United States, but it violates every law of God and Man!

Your co-petitioners, Anthony F. Palmisano and Lydia Mae Palmisano, were at all times available to process but were denied their rights and duties to comfort and guide their minor daughter in the hour of her greatest need, in violation of their and their daughter's Constitutional rights and due process of law.

Your petitioner should have been given a voice in these proceedings of which they were purposefully kept in ignorance.

Counsel submits that the Maryland court had no moral or legal grounds on which to base its ultimate decision to terminate and extinguish the infant baby's relationship with her natural family.

Counsel prays that this August Tribunal will adopt and apply to this case the blessed words, written with synoptic genius, of Mr. Justice Fortas in *In Re Gault, supra,* and return the baby, Madonna, to her natural mother and grandparents.

2. THE APPOINTMENT OF A GUARDIAN *AD LITEM* HEREIN WAS REPUGNANT TO DUE PROCESS OF LAW IN THAT SUCH APPOINTMENT WAS MADE TO SUPERCEDE THE RIGHTS OF THE NATURAL PARENTS AND GUARDIANS WITHOUT DETERMINING THAT THE NATURAL PARENTS AND GUARDIANS WERE UNFIT.

The Court of Appeals of Maryland in its opinion, herein, states:

> "The Maryland adoption laws do not require the knowledge of the mother's natural guardians, and in fact indicated that the court may appoint a guardian to protect the mother."

Such a violent and disruptive construction of the law is in complete derogation of the rights of a natural parent as to his minor children as established by this same court of Appeals as far back in Maryland as the case of *Helicus v. Franciscus, 2 Bland (Md.) 544,* where the court stated:

> "The relationship of parent and child is sacred and inviolable in its nature . . . The father is the rightful and legal guardian of all his infant children; and in general, no court can take from him the custody and control of them, thrown upon him by the law, not for his gratification, but on account of his duties . . ."

And the provision of Maryland Rule D75a (set forth in the opinion of the Court) that a guardian *ad litem* other than the natural parent and guardian may be appointed for a person under disability is in violation of the Due Process clause of the Fourteenth Amendment where it made no provision for service of process on such natural parent and guardian.

*Werner on the Law of Guardianship, at Section 31,* states:

> "That no guardian can be appointed of the person of an infant having mother or father living not declared unsuitable by a court of competent jurisdiction. . . and it is a fraud on the rights of a father to obtain guardianship of his child without his knowledge . . . ."

The law of Maryland long has recognized this basic right of natural parents as guardians in all matters concerning their infant children both through statute and through judicial interpretation. In the case of *Redman v. Chance, 32 Md. 42,* the Court of Appeals of Maryland stated,

> "In thus recognizing the common law right of the parent to the guardianship of the child, the Legislature was careful to guard against the appointment of any other person except upon notice to the father or mother, if living, and a strict compliance with this provision of the statute, was, therefore, made a condition precedent to the exercise of the power conferred. Such, indeed, are the important and delicate duties of a trust of this character, and so close and intimate, ought to be the relations between the guardian and the ward, that it was obviously

> the purpose of the framers of the law to prevent, except under extraordinary circumstances, the *intrusion* of a stranger between the parent and the child. . . ." (Italics supplied by the Court)

No other answer can be given than that a statute divesting a natural parent and guardian of the custody of his minor daughter is a denial of due process of law – a proposition which Maryland itself has recognized for at least a hundred years.

As Mr. Justice Jackson pointed out in *Mullane v. Central Hanover, 339 U.S. 306;*

> "Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case."

What more appropriate case for the application of Mr. Justice Jackson's words than this, where a child was so "untimely ripped" from its greatest treasure, its natural mother and natural grandparents?

### 3. THE SPECIFIC QUESTION HAS NOT BEEN PRESENTED TO THIS COURT BEFORE.

The Petitioners have been unable to discover a previous case in this Court dealing precisely with the questions brought before the Court by them. The closest in point are the cases of *In re Gault, Armstrong v. Manzo, and Mullane v. Central,* all cited, supra.

## Conclusion.

For the foregoing reasons, it is respectfully requested that this petition for Writ of Certiorari be granted.

Respectfully submitted,

Louis Peregoff
1800 N. Charles Street
Suite 46A.
Baltimore, Maryland 21201
Counsel for Petitioners.

## APPENDIX A.

**Opinion of Court of Appeals of Maryland**
**Filed February 23, 1968**

**Anthony F. PALMISANO et al.**
**v.**
**BALTIMORE COUNTY WELFARE BOARD.**
**No. 420.**

Court of Appeals of Maryland.
February 23, 1968.

Appeal by natural parents of adopted child from order of the Circuit Court for Baltimore County, Kenneth C. Proctor, J., refusing to reopen guardianship decree giving county welfare board guardianship with right to consent to adoption. The Court of Appeals, Finan, J., held that refusal to reopen guardianship decree was not improper, in view of showing that natural mother, though only 17 and without guidance of her parents, understood finality of her actions in giving her consent to adoption.

Order affirmed.

1. **Adoption 13**

Primary concern in adoption proceeding should be welfare of child rather than feelings of adults or near adults.

2. **Adoption 16**

Refusal to grant motion of natural parents of adopted child to reopen guardianship decree giving county welfare board guardianship with right to consent to adoption was not improper, in view of showing that natural mother, though only 17 and without guidance of her parents, understood finality of her actions in giving her consent to adoption. Maryland Rules, Rules D75 a, 625a; Code 1957, art. 16, § 74.

3. Adoption 16

Natural parents of adopted child, who filed motion to strike guardianship decree giving county welfare board guardianship with right to consent to adoption, were limited to exposing gross irregularities in hearing which preceded such decree, and could not allege irregularities in welfare board's compliance with decree. Maryland Rules, Rule 625.

4. Adoption 7

Rule relating to power of court to enter a final decree of guardianship with right to consent to adoption was designed to expedite placement of adoptive children by welfare board or other guardian. Maryland Rules, Rule D78.

5. Adoption 3

Adoption laws were formulated in anticipation of emotional controversy and were designed to avoid it, as much as possible, by safeguarding rights of both natural as well as adoptive parents. Maryland Rules, Rule D78.

---

Douglas N. Sharretts and Edward J. Angeletti, Baltimore (Louis Peregoff, Towson, on the brief), for appellants.

Jean G. Rogers, Asst. County Sol. (R. Bruce Alderman, County Sol., and Harris James George, Deputy County Sol., Towson, on the brief), for appellee.

Before HAMMOND, C. J., and BARNES, McWILLIAMS, FINAN and SINGLEY, JJ.

FINAN, Judge.

[1] When an adoption proceeding lengthens into prolonged litigation, when such litigation finds its way to the appellate level, one may be sure that behind every legal move and counter move lies an abundance of bitterness and, perhaps,

heartbreak. If, to this unfortunate circumstance, one adds a child born out of wedlock to teenage parents who successfully conceal the birth from their own families, who in desperation surrender the child for adoption to a public agency, only to subsequently have a change of heart after the adoptive parents have taken the infant into their home and formed a tender affection for it, the tragedy of the case becomes all too apparent. It is no wonder that, under these conditions, the child may properly be characterized as a "physical football" of the welfare board. It must follow that the primary concern of this Court is the welfare of the child, rather than the feelings of the adults or near adults who are the *dramatis personae.*

Madonna Peggy Hale was born in the Spring of 1964, the illegitimate child of Donna Agatha Palmisano, then age seventeen, and Ralph Hale, age twenty. Both young parents were successful in concealing the pregnancy from their parents, respected members of the community. On the advice of an adult friend Donna turned her baby over to the Harford County Welfare Board, which in turn placed it in a foster home. Except for the period between January and October of 1965, when the child was with prospective adoptive parents who later separated, the infant has remained with the original foster parents, and they are now the adoptive parents.

In July of 1964, the parents of the infant spoke to Mrs. Parlett, a Baltimore County Welfare Board social worker, and on July 13 Donna signed a "Release of Parental Rights," and in early September the father signed his "Consent," thereby turning the baby over to the Baltimore County Welfare Board for adoption.

The primary objection to the entire set of adoption proceedings raised by appellants concerns the hearing on September 10, 1964. On that date the Baltimore County Welfare

Board petitioned for guardianship with the right to consent to adoption of Madonna Peggy Hale. A show cause order signed by a clerk of the court was issued, and served upon the mother, who was not *sui juris*, on that same date by Mrs. Parlett, the social worker. Also on the 10th, the court appointed John B. Farrell, an attorney and a Baltimore County probation officer, to be the mother's (Donna Palmisano) guardian *ad litem*.

The record for the most part contains conflicting accounts of what transpired between Donna Palmisano and her guardian *ad litem*, however there is sufficient evidence from which certain conclusions may be drawn. It is apparent that Mr. Farrell spent no more than twenty to thirty minutes with Donna Palmisano, part of that time in the presence of Mrs. Parlett and Ralph Hale, the father. The guardian did not inform Donna that the object of the interview was to determine whether she had reason to show cause why the adoption should not be decreed, nor did he explain that a guardian for the baby would be appointed if she raised no objection by October 15. He did not tell her that the guardian would then possess the absolute right to consent to adoption and to change the child's name. He did not tell her that the consent she signed in July was a waiver of notice to her of any proceeding relative to the adoption of the child. He did however tell her that what she had signed had such a degree of finality to it that she could never again get back her child. His guardian's answer, also filed September 10, recited that he adequately informed Donna that once the decree was signed, it extinguished all rights of the natural mother, for all time. It also stated that he was assured by the mother that she was willing to sign a release identical to the July 13 release. The lower court was satisfied that the consequences of the proceedings, in fact, were made known to Donna, and that she understood them.

On October 20, 1964, the circuit court entered a decree giving the Baltimore County Welfare Board guardianship with the right to consent to adoption. On November 5, 1965, over a year later than the decree, the Board sent the consent to adoption to the Harford County Welfare Board. Four days later, the foster parents petitioned the Harford County Circuit Court for adoption of the infant, and the final adoption decree was issued by Judge Stewart Day on November 15, 1965.

Also in November of 1965, Donna Palmisano, the natural mother became increasingly desirous of getting her baby back, and so informed Mrs. Parlett. On November 5, the same date that the Baltimore County board sent its consent to adoption to the Harford County board, Mrs. Parlett notified the Harford County board of the natural mother's desire and on November 12, after the foster parents had already filed their petition for adoption, the Baltimore County board asked the County Solicitor to obtain an extension of its legal guardianship, which petition was filed on November 17, 1965, two days after the final adoption decree.

The first indication that the October 20, 1964 decree might be questioned occurred on December 15, 1965 when counsel for the appellants (Ralph Hale, Donna Palmisano and her parents) filed an appearance. On January 6, 1966, the natural parents of Madonna Hale were married, possibly for the purpose of strengthening their position in this litigation, and on February 10, appellants formally filed their motion to strike the October 20, 1964 guardianship decree. After a hearing on the petition, held May 24, 1966 the lower court dismissed the appellants' motion to strike and it is from this dismissal that the appeal is taken.

[2] The Maryland rules provide that a court shall have revisory power over an enrolled decree only in cases of fraud, mistake or irregularity. Md. Rule 625 a. The appellants here

raise only the issue of irregularity, and it does not take an overly critical inspection of the outlined facts to see that the officials in charge of this adoption acted in a somewhat unorthodox manner. However, this does not necessarily indicate that they were neglectful of their responsibilities or failed to act in the best interests of both parents and child. After a most thorough review of the record, we are of the opinion that the court below did not err in refusing to reopen the October 20, 1964 guardianship decree.

Appellants allege, and appellee concedes, that during the period between the birth of Madonna and the guardianship hearing of September 10, Donna Palmisano was under emotional stress. She felt unable to confide in her parents because her mother, "an impossible woman who * * * cuts a wide swath socially, but makes everybody around her miserable," had apparently rejected Donna, and in fact blamed Donna for her mother's miscarriage of a baby boy. Both Ralph Hale and Mrs. Eldridge, a former family friend, described Donna's mother as an emotionally disturbed woman. In such a situation, Mrs. Parlett, the social worker, was under no obligation to inform Donna's parents, and to do so would, in fact, derogate from her duty to protect the interests of Donna and her baby.

The record shows, however, that both Mrs. Parlett and Mr. Farrell took pains to inform the natural parents that the adoption would irrevocably terminate their parenthood. Mrs. Parlett testified that it was her custom to thoroughly explain the effect of the release of parental rights, and that she told Donna that the release was not final until the petition was filed in court and the show cause order expired.

"Q. When you explained this Show Cause Order of September 10, 1964, did you tell Donna that this was an order for her to show cause why adoption should

not be decreed? A. Yes. I have made it a firm rule to explain in detail to every minor mother that I am assigned to, and I always say to every one of them, you have this date on here up to this date on here to change your mind, to object to this going through the courts, either in person or by an attorney, and I explain it very fully because it is the law, and I'm sure that every minor mother has the right to know that. I make a strong point of that. I would testify that I told that without any doubt to every minor mother that I contact, and I remember explaining it to Donna."

Mr. Farrell testified that he stressed the finality of the decree, and also informed both parents that even if they later married, they would be unable to get the baby back. We think that the record supports the finding that Donna understood the finality of her actions, even without the guidance of her parents.

The Maryland adoption laws do not require the knowledge of the mother's natural guardians, and in fact indicate that the court may appoint a guardian to protect the mother. Prior to 1963, Code 1957, Art. 16, § 74 provided that the minority of a natural parent would not be a bar to such parent's consent to adoption. In 1963, the statute was amended to read:

"Minority of a natural parent shall not place such parent under a disability in adoption or guardianship with the right to consent to adoption proceedings and such parent, if he has attained the age of eighteen (18) years, may give a valid consent to adoption or guardianship with the right to consent to adoption and/or join as a party in such proceedings and shall be considered *sui juris* and no adoption or guardianship with right to consent to adoption shall be invalidated because of the minority of a natural parent."

H. Emslie Parks, Esq., a lawyer and a member of the Advisory Committee on Adoption of the State Department of Welfare,

who drafted the 1963 amendment, testified that the only purpose of the amendment was to reduce the age below which a guardian must be appointed from 21 to 18. It does not, as appellants would have us hold, disable a mother under 18 from giving her consent to an adoption.

Maryland Rule D75 a governs the appointment of a guardian *ad litem* and states:

> *"a. Parents Under Disability—Guardian ad litem.*
>
> If a parent whose child is to be adopted, or for whom a guardian with the right to consent to adoption is to be appointed, is a person under disability, the court shall appoint a guardian *ad litem* for such parent after service of the show cause order as required by Rule D74 (Notice). The guardian *ad litem* shall be a member of the bar, or other responsible and disinterested person, who shall investigate the facts of the case and report his findings to the court in writing; *if such parent has consented to the proceeding,* it shall only be necessary for guardian to investigate and report to the court whether such parent understands the legal effect of the proceeding and consents thereto." (Emphasis supplied).

The fact is that Donna signed a consent to adoption in July, and that on September 10, Mr. Farrell carefully informed Donna of the legal effect of that consent before submitting his answer, and, it appears to this Court, sufficiently comply with Rule D75 a. It should also be noted that Donna did not testify at the May 24, 1966 hearing at which time the validity of her consent was challenged, although she had the opportunity to do so.

Appellants ascribe certain irregularities to the issuance of the show cause order: the fact that it was issued by a clerk of the court rather than the Judge himself; the fact that it was delivered by Mrs. Parlett, an interested party; the fact that it incorrectly used the term "adoption" rather than "guardianship

with the right to consent to adoption"; the fact that a copy was not served on Donna's natural guardians, her parents.

To answer the last allegation, it appears that appellants have misunderstood the application of the rules of procedure relative to adoption. Rule D74 c, governing the service of the show cause order, provices in part:

> "An additional copy of the show cause order shall also be served, in the manner provided by Rule 119 (Service of Process—Person under Disability) where both parents are under disability or the mother of a child born out of wedlock is a person under disability *and their or her consent is not filed with the petition.* No copy of the petition shall be served or published." (Emphasis supplied.).

Any doubts as to the construction to be given this rule are dispelled by the Rules Committee's notes:

> "The purpose of this Rule is to assure the protection of due process to the natural parent whose rights will be terminated by the proceeding and at the same time to give adopting parents and adopted child the protection of a binding decree. Thus service of the show cause order on the natural parent may not be waived by the parent. Where the natural parent of an infant has previously consented to termination of parental rights, however, there does not seem to be any need to inform the parents of such natural parent of the proceeding, even if the natural parent is a person under disability."

Furthermore, Judge Proctor was himself a member of the Rules Committee, and at the hearing below he related the policy behind the adoption rule:

> "I know that when the adoption rules were being debated by the Rules Committee, we had a very extended discussion on this problem of notice, vel non, to the natural guardian of the natural mother, * * * * * * it

is my recollection of this debate that the conclusion was that as between notice to a parent or parents and keeping the matter secret because of the wishes of the natural mother, that the majority of the committee, a rather large majority, was in favor of the latter; that the protective measures which the Court felt was essential was an insulation between the two, a guardian *ad litem* who would investigate the matter and who would advise the minor—after all, most of them were girls under twenty-one which we were considering at that time—who would advise them of their rights and to ascertain with a reasonable degree of certainty what her rights were and the consent was voluntary."

In response to the other alleged irregularities, we must conclude that none exist, and if any unlawful procedure was performed, appellants have not shown this Court where they have been prejudiced. It should be noted that Mrs. Parlett was an employee of the Baltimore County Welfare Board and not herself a party to the hearing. Rule 116 a (1) states that a party to a suit may not be appointed to serve process. However, the Court has never held an *employee* of a party to be under such a disability.

[3,4] The appellants also label as an irregularity the fact that the October 20, 1964 decree of guardianship allegedly expired one year later, but that the petitions for extension of guardianship and for adoption were not submitted under November of 1965. Rule D78 states:

"*a. Interlocutory Decree Unnecessary.*

The court may enter a final decree of guardianship with the right to consent to adoption without first having entered an interlocutory decree.

*b. Duration.*

If a petition for adoption has not been filed within one year from the entry of the decree of guardianship

with the right to consent to adoption, the guardian shall file with the court a written explanation of the delay. At any time the court may terminate the guardianship by revoking the decree."

It can be seen that the rule does not provide for *automatic expiration* of a final guardianship decree, but merely requires an explanation of why adoption has been delayed. We are of the opinion, however, that the resolution of this case does not require that an interpretation be given Rule D78. We believe that appellants, who filed a motion to strike a final decree pursuant to Rule 625, are limited to exposing gross irregularities in the hearing which preceded the decreee being challenged. It is beyond the scope of Rule 625 for them to allege irregularities in appellee's failure to complete adoption and to file an explanation within one year does not work hardship on the appellants. We believe that Rule D78 was designed to expedite placement of adoptive children by the Welfare Board or other guardian. Upon the issuance of the final decree on October 20, 1964, the parents of the child were no longer interested parties, and therefore lacked the standing to challenge the Welfare Board's procedures subsequent to the final decree.

This Court is well aware that its decision has permanently separated a child from her natural parents, who are now in a position to accept her as their own. It realizes that as time goes by, these young parents may be haunted by the realization that, just a few miles away, their daughter is growing up in another home with people she will look upon as her father and mother. However, to do otherwise, this Court would be dissolving the foundation underlying all adoptions, the need to surround the final decree with a high degree of certainty. Society looks upon adoption as a salutary and uplifting humane act. The general welfare of the State is enriched by its use. It provides countless foundlings with an opportunity

for a normal childhood which otherwise they might not have. Anything which would undermine public confidence in adoption procedures must be viewed by the courts in the gravest light.

[5] We deem it unfortunate that Judge Day by verbal order and Judge Dyer subsequently by written order, directed that the adoption proceedings in Harford County be unsealed for inspection by the natural parents and their attorneys, thus revealing the name and address of the adoptive parents. Adoption laws were formulated in anticipation of emotional controversy and were designed to avoid it, as much as possible, by safeguarding the rights of both the natural as well as the adoptive parents. In this case, those safeguards were utilized insofar as the natural mother was concerned, as she knowingly and intelligently consented to the adoption. We affirm the order appealed from.

Order affirmed, costs to be paid by the appellants.

## APPENDIX B.

### Opinion of Circuit Court of Baltimore County, State of Maryland.

### MEMORANDUM OPINION
(Filed June 24, 1966)

This case comes on for hearing before the Court on the motion of Madonna Agatha Hale (formerly Donna Agatha Palmisano), herein called "Petitioner", and her parents to strike the order of this Court, dated October 20, 1964, under which the Baltimore County Welfare Board, herein called "the Board", was appointed legal guardian of Madonna Peggy Hale (minor child of Petitioner), with the right to consent to the adoption of such minor child, and the answer of the Baltimore County Welfare Board to such motion. Testimony was taken in open Court and arguments of counsel have been heard and considered.

### FINDINGS OF FACT

1. Madonna Peggy Hale was born on May 28, 1964, at the Harford Memorial Hospital, Havre de Grace, Harford County, Maryland. The mother of the child is Petitioner and the father is Ralph Hale. Petitioner was born on March 26, 1947. Ralph Hale was twenty years of age when the child was born.

2. Although Petitioner continued to live with her parents in Towson, Baltimore County, Maryland, until just a day or two prior to the birth of the child, her parents were unaware of the fact that she was pregnant and did not learn of the birth of the child until some months thereafter. After Petitioner became pregnant she and Ralph Hale agreed that they would do everything possible to keep their respective parents from learning of her condition. Approximately a month before the baby's birth they went to see Mrs. Patricia Eldredge, who lives in Towson,

for help. Mrs. Eldredge is a nurse and doctor's secretary. She and her husband have been friends of Petitioner for some time. At one time Mrs. Eldredge was friendly with Mrs. Palmisano. Mrs. Eldredge made arrangements for medical care for Petitioner in Havre de Grace. When Petitioner went into labor Mr. Hale and Mrs. Eldredge took her to the Harford Memorial Hospital. Petitioner's parents believed that she was in Ocean City, Maryland, with the Eldredges, on vacation. At the hospital, the young couple pretended that they were married. Mr. Hale signed the hospital releases as husband of Petitioner. The birth certificate showed the name of the child as indicated above.

3. Several days after the birth of the child, Petitioner returned to her parents' home. Over the weekend the baby was kept by a friend of Mrs. Eldredge. The young couple decided that the only possible solution to their problem was to place the infant for adoption. However, as they were fearful of contacting a Baltimore County agency, on June 1, 1964, they took the baby to the Harford County Welfare Board and requested foster care for her. On the same day, the baby was placed in the foster home of Mr. and Mrs. Howard Harry Cramer, as hereinafter noted, the adopting parents.

4. After the birth of the child the natural parents saw each other intermittently. However, beginning with approximately July 13, 1964 and continuing until about November 3, 1965, the only contacts between them were by telephone. On or about the latter date, they began seeing each other again. On January 6, 1966, they eloped to Elkton, Cecil County, Maryland, where they were married. Since their marriage, although they have been seeing each other, they have continued to live with their respective parents. For some time Petitioner has been employed as a cashier at Cinema I and Cinema II in Timonium, Baltimore County, Maryland. Ralph

Hale is now in his 4th year at the University of Baltimore and expects to complete his college education with the 1966 summer session. He is faced with the prospect of being drafted shortly thereafter. He testified that as soon as he has completed his education and service, if any, he and Petitioner plan to establish their own home. Necessarily, the time when this will come about is uncertain. Counsel for Petitioner offered to prove through Mr. Palmisano that he and his wife wish to have the child in their home, and are willing to take care of her until such time as the parents establish their own home.

5. The baby remained in the Cramer foster home from June 1, 1964 until approximately January 15, 1965. On or about the latter date, a couple in Harford County became interested in adopting the infant and she was placed with them as prospective adoptive parents. The infant lived with this couple until on or about May 8, 1965. On that date the infant was returned to the Cramers pending check of the prospective adoptive parents and their home. Sometime between May 8 and October 15, 1965, the prospective adoptive parents had marital difficulties and separated. Beginning with the latter date, 10/15/65, the Cramers have kept the child in their home as adoptive parents.

6. These proceedings were instituted on September 10, 1964, by a petition of the Board which asked that it be named as legal guardian with the right to consent to the adoption of the infant when desirable and that a guardian *ad litem* be appointed for the natural mother of the child. Along with the petition there were filed the following:

(a) Consent of the natural mother, dated July 13, 1964, signed and sworn to by her, in which it was recited that the natural mother "being unable to provide her (the child) with the proper care, do hereby request the Baltimore

County Welfare Board to plan for adoption placement of this child. I voluntarily surrender Madonna Peggy Hale to the Baltimore County Welfare Board, thereby relinquishing all of my parental rights and privileges. I have made this decision after careful consideration and my consent to adoption is given of my own free will and volition without any undue influence being exerted upon me and without any promise of compensation or reward either expressed or implied being extended to me. I hereby waive notice of any proceeding relative to the adoption of my child. I hereby agree and do any and all other actions that may be required to facilitate the adoption of the child."

(b) Consent of Ralph Hale, dated September 4, 1964, signed and sworn to by him as the natural father of the child, in the same form as that just quoted.

(c) Summary of child's parents prepared by Mrs. Genevieve W. Parlett of the Board, dated September 9, 1964, and summary on child prepared by the same person and dated the same date.

(d) Birth certificate.

7. On September 10, 1964, this Court signed an order appointing John B. Farrell, attorney, as guardian *ad litem* for Petitioner, the order providing that "said attorney shall comply with the provisions of Rule 1175, Maryland Rules of Procedure, 1958 Edition, as amended (now Rule D75)." On the same date, Judge Raine signed a show cause order pursuant to Maryland Rule 1174 (now Rule D74). Under this order Petitioner was ordered to show cause on or before October 15, 1964, why the adoption of Madonna Peggy Hale should not be decreed provided a copy of such order be served on Petitioner on or before September 24, 1964, and Genevieve W. Parlett was appointed to serve such order upon Petitioner and to make

proof of service by affidavit. This order was served upon Petitioner by Mrs. Parlett on September 10, 1964. Proof of service was filed in these proceedings on September 11, 1964. There is some confusion as to the sequence of events which took place after Judge Raine signed the two orders referred to above. Mrs. Parlett testified that her first recollection was that service took place just outside the Court House after Mr. Farrell, as guardian *ad litem*, interviewed Petitioner. Mr. Farrell was under the impression that the show cause order had already been served at the time of the interview. Mrs. Parlett's recollection was that Mr. Farrell interviewed Petitioner by herself. Mr. Farrell testified that most of the interview took place in the presence of Mrs. Parlett and Mr. Hale, as well as Petitioner; that he did ask Mrs. Parlett and Mr. Hale to leave the room just before the interview was concluded. Mr. Farrell then asked her four or five additional questions.

8. On September 10, 1964, Mr. Farrell filed his answer as guardian *ad litem* on behalf of Petitioner. This recited that he interviewed Petitioner on September 10th in the presence of Mrs. Parlett; that he advised Petitioner of her rights "concerning the withdrawing of her release or consent at any time prior to the signing of a final adoption decree, and after being so advised, the said Donna Palmisano stated that she understood the finality of her action, to wit: That once signed, an adoption decree would forever terminate and extinguish any and all relationship between herself and her child, Madonna Peggy Hale, and place her in a position of a total stranger to the child, with no claim to her or rights to her whatsoever; that the Release executed by her on July 17, 1964, was free and voluntary, without undue influence, coercion, inducement or threat; that she was not paid any money by anyone to execute the said Release, and that, if required, she would again execute such a Release at this time; that during the aforementioned

interview, Donna Palmisano did reaffirm the matters and facts set forth in said Release dated July 17, 1964."

In his testimony, Mr. Farrell admitted that there were two errors in this answer: First, in two places the date of the consent or release is stated as July 17, 1964, whereas it should have been July 13, 1964, and second, in two places the words "adoption decree" were used, whereas the word "adoption" was not used by him in this connection.

9. Mr. Farrell testified that this answer is actually a form used by him; that in the interest of time he gives his secretary an answer from a previous case and merely changes the name of the infant, the date of the interview, those present at the interview and the date of release or consent to the facts of the present case. In all other respects the answer is exactly the same in each case. So far as reference to a future decree is concerned, Mr. Farrell testified that he tells each girl "that when a decree is signed they will not be any more related to this child than I am, that when that happens it is over for all times." He does not explain that there is a guardianship decree which in his words "cuts off their rights" or that after that decree is signed, the child is placed in an adoptive home and then there is a final adoption decree. Mr. Farrell testified that his understanding of his responsibilities under Maryland Rule 1175 (now D75) are "first, to satisfy my own mind that the infant defendant knows exactly what she is doing, and secondly, to determine from her that day if she is ready to reaffirm her position." i.e., whether she would on the date of the interview be willing to execute the release. Mr. Farrell further testified that he usually advises the girl that she has until such and such a date under the terms of the show cause order to file an answer if she wishes; that until that date she has a right to change her mind; that he probably did this with Petitioner.

Mr. Farrell's testimony makes it clear that he explained to Petitioner and Ralph Hale that once this matter is final, "you cannot get your baby back"; that even if they married subsequently "there is no chance of getting the baby back." Apparently, Hale's release was obtained at the suggestion of Mr. Farrell because of the expressed wish of the young couple to marry as soon as they could.

Although he usually inquires of the natural mother why she is giving up her baby, he did not do so in this case. He could not recall whether he advised Petitioner that the object of the interview was to decide whether or not she had reason to show cause why the adoption should not be decreed. He had nothing in his notes to indicate this one way or the other. He further testified that "to the extent that any girl of comparable age would understand" he had explained to Petitioner and she understood the legal effect of the proceedings and her consent. In summation of his interview, Mr. Farrell, in response to a question from the Court, stated "I told her that, once the decree was signed in this proceeding, that would be absolutely final. That she would be no more relation to the child than I was, that this was final for all purposes and all times." He did not tell Petitioner that a guardian would be appointed if she raised no objection by October 15, 1965. Nor did he tell her that the guardian would have the absolute right to consent to adoption. Nor did he tell her that the guardian would have the right to seek a change of the child's name. Nor did he tell her that after the decree appointing a guardian was signed, she could not see her child.

Mr. Farrell testified that he specifically asked Petitioner whether she would, at that time, be willing to sign a release like the one executed on July 13th if he then and there asked her to do so, to which she responded "Yes".

Mr. Farrell did not recall telling Petitioner that the consent of July 13th was a waiver of any notice to her of any proceeding relative to the adoption of the child, or that, by such consent, she agreed to any and all other things required to facilitate the adoption of the child. Mr. Farrell testified that in his judgment Petitioner understood the significance of the consent which she had given, but that he did not explain the legal significance of the things she had said therein.

The interview lasted about twenty minutes. Mr. Farrell's longhand notes consisted of about one-half letter sized page.

10. Mrs. Genevieve W. Parlett has been a case worker for the Board since 1953. Prior to that she had been with the Baltimore City Welfare Board from 1935 to 1940 and with the Board from 1940 to 1941. She had first seen Petitioner on July 1, 1964, from 3 to 6 p.m., at the home of Mrs. Eldredge. Sometime in the second week in June, her supervisor had given her a telephone request from the Harford County Welfare Board for institution of legal proceedings preliminary to an adoption – for the appointment of a guardian with the right to consent to adoption. She did not learn the name of the couple in whose home the baby had been placed, viz., the Cramers, until November, 1965. She had, however, learned of the placement in a prospective adoptive home and had been under the impression that the adoption had taken place and that the adopting parents and the child had moved to California. On July 6, 1964, Petitioner came to the Board with Ralph Hale and for about an hour and a half had discussed with Mrs. Parlett her problem and her plans for the baby, viz., adoption. Petitioner asked whether she could visit the baby. Mrs. Parlett telephoned the Harford County Welfare Board and made an appointment for that purpose and advised Petitioner that she could see the baby on the morning of July 13, 1964, at the offices of the Harford

County Welfare Board. Petitioner and Ralph Hale visited with the baby on that date and at that place. That afternoon, Petitioner came to the offices of the Board and signed the consent. Mrs. Parlett explained the effect of the consent; that this was the first step; that further steps would be required, including the signing of a show cause order and the appointment of a guardian *ad litem*. Mrs. Parlett told Petitioner that the appointment of a legal guardian for the child would be the final act. Mrs. Parlett did not tell her that any time prior to legal adoption Petitioner could change her mind. Petitioner was with her for between one hour and one hour and one-half. Mrs. Parlett was quite definite the Petitioner understood what she told her on July 13th and the effect of her action.

Sometime during the week prior to November 3, 1965, Mrs. Parlett received a telephone call from a Probation Officer in Baltimore City inquiring about the child on behalf of Edward J. Angeletti, Esq., an Assistant State's Attorney in Baltimore City. On November 3, 1965, Mr. Angeletti telephoned Mrs. Parlett and advised her that Petitioner had come to see him and was "pining to get her baby back." Mrs. Parlett had last seen Petitioner in September, 1964. Because of this information Mrs. Parlett was concerned for Petitioner's emotional state. The conversation with Mr. Angeletti lasted fifteen or twenty minutes. That night Mrs. Parlett telephoned Ralph Hale and inquired about Donna. He told Mrs. Parlett that for some time he had no contact with Donna. On Friday, November 5th, Mrs. Parlett telephoned Mrs. Brown, a case worker of the Harford County Welfare Board, and apprised Mrs. Brown of her talk with Mr. Angeletti. Some two weeks after her initial talk with Mr. Angeletti, not having heard from him, Mrs. Parlett telephoned him. He told Mrs. Parlett that he had suggested to Petitioner that she contact Mrs. Parlett. He told Mrs. Parlett that he expected Petitioner in his office

within a few days and would then call her. At about 9:15 p.m. on November 16th, at the request of Petitioner, Mrs. Parlett met her at her place of employment. The object of the conversation was to reconcile Petitioner to the loss of her child.

11. Proceedings for the adoption of the child were filed in the Circuit Court for Harford County on November 9, 1965. Four days previously, on November 5, 1965, at the request of the Harford County Welfare Board, the Board had executed and sent to Harford County the necessary consent to adoption. On November 15, 1965, Judge Stewart Day signed an order decreeing that "the minor child, Madonna Peggy Hale, is hereby made and declared to be the legally adopted child of Howard Harry Cramer and Annie Laura Kidd Cramer, his wife, and it is further ordered that the name of the child be and it is hereby changed to Janie Kay Cramer." On November 12, 1965, the Board executed and sent to the office of the County Solicitor a report that "Madonna Peggy Hale was placed in an adoption home by the Harford County Welfare Board. That the agency reports that the adoption is not yet final although the petition is filed. They are requesting an extension of the legal guardianship." This was not filed in these proceedings until November 17, 1965.

12. The first notice to this Court that the order of October 20, 1964, might be questioned was the entry on December 15, 1965 of the appearance of Louis Peregoff as attorney for Petitioner and her parents.

13. The Petitioner, represented by competent counsel, elected not to testify. The County elected not to call her to the stand. The Court was of the opinion that to ask her to take the stand as a Court's witness would have constituted interference with the rights of trial counsel.

## THE LAW

On February 24th, 1961, Judge J. Gilbert Prendergast handed down an opinion in "Ex Parte, In The Matter of the Petition of the Maryland Children's Aid Society, Inc., et al., for Guardianship with the Right to Consent to Adoption of a Minor." (Circuit Court No. 2 of Baltimore City, Docket 5 AD, Folio 121, File No. 5271 AD.) In that case, the girl under the age of 21 years had given birth to an illegitimate child in Washington, D.C. Fifteen days after the birth of the child, the mother gave the care and physical custody of the child to the Society. The mother of the natural mother of the child was fully aware of the birth, and was willing to accept the child in her home. The Society was aware of this. Six weeks after the birth of the child, the natural mother signed a petition asking that the Society be appointed guardian with the right to consent to the adoption of her child. On the same date, a final order awarding such guardianship to the Society was signed. No guardian *ad litem* was appointed in spite of the fact that the natural mother was "under disability." Subsequently, the natural mother relented and sought to set aside the appointment of the guardian. No adoption proceedings had been filed.

Judge Prendergast had no difficulty in finding that there was an irregularity in obtaining the decree in that, the natural mother being "under disability", a guardian *ad litem* should have been appointed to advise and represent her, and accordingly set the decree aside.

Subsequent to this decision, the State Department of Welfare determined that it was desirable to amend the Code, Article 16, Section 74, dealing with consents in adoption proceedings. H. Emslie Parks, Esq., a lawyer, who was a member of the Advisory Committee on Adoption of the State Department of

Welfare, was asked to draft the necessary legislation. This he did with the assistance of Dr. Carl N. Everstine, of the Department of Legislative Reference. Mr. Parks has been an attorney at law since 1956. He specializes in adoption cases. For several years after his admission to the bar, he was a Staff Assistant to the Standing Committee on Rules of Practice and Procedure of the Court of Appeals of Maryland, and worked with the Subcommittee which drafted the adoption rules. The bill prepared by Mr. Parks was introduced as Senate Bill 276, and was enacted, without any change whatsoever, as Chapter 173 of the Laws of 1963. Mr. Parks testified concerning this bill and the legislative intent in its enactment. He stated that, after the opinion of Judge Prendergast referred to above, it became necessary to appoint guardians *ad litem* in all cases involving natural mothers under 21 years of age; that the sole object of the amendment was to make it unnecessary to appoint guardians *ad litem* for natural mothers eighteen years of age and over; that it was definitely not intended to invalidate consents of natural parents under eighteen years of age.

Petitioner's attorneys objected to testimony from Mr. Parks on the ground that the legislation was clear and unambiguous, and that, therefore, testimony as to legislative intent was not required. It is the opinion of the Court that the last paragraph of Section 74 of Article 16, as amended, by the laws of 1963, is not free from ambiguity and that such testimony was admissable. The last paragraph, as amended, reads as follows:

> "Minority of a natural parent shall not place such parent under a disability in adoption or guardianship with the right to consent to adoption proceedings and such parent, if he has attained the age of eighteen (18) years, may give a valid consent to adoption or guardianship with the right to consent to adoption and/or join as a party in such proceedings and shall be considered sui juris and no adoption or guardianship with

right to consent to adoption shall be invalidated because of the minority of a natural parent."

Maryland Rule 625a, "Revisory Power of Court over Judgment," reads as follows: "For a period of thirty days after the entry of a judgment, or thereafter pursuant to motion filed within such period, the court shall have revisory power and control over such judgment. After the expiration of such period, the court shall have revisory power and control over such judgment, only in the case of fraud, mistake or irregularity."

The Court of Appeals has said that this rule merely restates, in substance, the rule at common law, *Pumphrey v. Grapes*, 215 Md. 573, 575. In *Tasea Investment Corp. v. Dale*, 222 Md. 474, 477-480, the Court of Appeals had to consider the effect and application of this rule. It was held that after a decree has become enrolled, one seeking to set aside such decree must produce, "clear and convincing proof," of the basis asserted for such action. The Court described the present rule as consolidating and simplifying the common law, that although, "deceit and surprise," have been eliminated as the grounds on which a decree may be set aside, fraud includes deceit, and irregularity encompasses surprise. As to the latter, the Court said, "And *surprise*, which means a taking unawares, has an affinity with irregularity in that the latter implies a departing from an established rule, method or usage, which might cause surprise."

In the instant case, Petitioner does not assert fraud as a ground for setting aside the order of October 20th, nor does Petitioner claim mistake. Accordingly, the sole basis on which the order in this case can be set aside – if such action is merited at all – is irregularity in the proceedings.

The pertinent Maryland Rules concerning adoption are as follows:

(1) Rule D71b, states who may file a Petition for Guardianship with Right to Consent to Adoption; "A person authorized by law to become a guardian with the right to consent to adoption may file a petition for guardianship with the right to adoption." There is no question but that the Board is such a person.

(2) Rule D72b, sets forth the requirements for the contents of such a petition. In doing so it incorporates by reference, Section a, *Petition For Adoption, 1. Contents;* "to the extent that such requirements are applicable, and such facts are known to the petitioner." In the judgment of the Court, the Petition in this case meets such requirements.

(3) Rule D73 provides: "A decree * * * of guardianship with the right to consent to adoption shall not be entered until there has been filed in the proceeding the signed and verified consent required by law, * * * "

There is no doubt that a "verified consent" signed and sworn to by Petitioner was filed in this proceeding. Petitioner contends, however, that such consent is not valid – is not legally effective. The Court will consider this contention later.

(4) Rule D74 is concerned with 'Notice". Section a provides that the Court shall enter a show cause order upon the filing of a petition, such as that involved in this case. Such an order was signed on September 10, 1964. Section b sets forth that what the show cause order shall contain viz., (a) that a petition for guardianship with the right to consent to adoption has been filed; (b) the name of the person for whom a guardian is to be appointed (c) the date on or before which cause to the contrary shall be shown; and (d) the date on or before which service shall be made. The show cause order signed in this case fully complies with the provisions of this section.

Section c1, provides for service of the show cause order when, as in this case, the child for whom a guardian is to be appointed, is a minor. Service on the mother is required, the minor having been born out of wedlock. This section further provides that: "An additional copy of the show cause order shall also be served, in the manner provided by Rule 119 (Service of Process-Person under Disability), where both parents are under disability or the mother of a child born out of wedlock is a person under disability and their or her consent is not filed with the petition." The Court finds, as a matter of law, that the service contemplated by this portion of Section c was not required in this case if Petitioner's consent, filed with the petition, was valid and lawful. Failure to serve a copy of the show cause order in the manner provided by Rule 119 would constitute "an irregularity" if, and only if, Petitioner's consent filed with the petition was invalid and, therefore, ineffective.

(5) Rule D75 provides for the appointment, in a case such as this, of a guardian *ad litem* for a parent for whose child a guardian is to be appointed if such parent is "under disability", such appointment to be made after service of the show cause order. The Petitioner was under eighteen years of age when the petition was filed and was, therefore, "under disability." Although the Court finds that the guardian *ad litem* was appointed before the show cause order was served, rather than after such service as provided by the Rule, the Court finds, as a matter of law, that the Court. This was done promptly. Finally, "At any time the court may terminte the guardianship by revoking the decree." The Court finds, as a matter of law, that the power of the Court to revoke is terminated by a decree of adoption which has become enrolled; that the only power that this Court now has in this respect, is that provided by Rule 625, the decree of the Circuit Court for Harford County dated November 15, 1965, having become enrolled.

The foregoing analysis of the applicable Statutes and Rules of Court makes it clear that the controlling question in this case is: Has Petitioner in this case produced "clear and convincing proof" that the consent signed and sworn to by Petitioner on July 13, 1964 was invalid and legally ineffective. This primary question requires consideration of a subsidiary point, viz.: Has Petitioner produced "clear and convincing proof" that she did not understand the legal effect of this proceeding. These will be discussed in inverse order.

Did Petitioner understand the legal effect of this proceeding? Petitioner elected not to give the Court the benefit of her testimony. Having failed to assert under oath that she did not comprehend the effect of this proceeding, she cannot complain if the Court infers from such silence that she did understand such effect. Although the procedure followed by Mr. Farrell fails to meet the wholehearted approval of the Court, that is not controlling, provided that, after his interview with Petitioner, she was bound to understand the finality of the guardianship proceeding and the effect of such proceeding on her natural rights as mother of the child. It is crystal clear to the Court that Mr. Farrell not once, but several times during the course of the interview, told Petitioner in so many words that once the decree although the appointment of a guardian *ad litem* is mandatory, the time sequence of such appointment and such service is directory only. When appointment, service and interview by the guardian are all accomplished on the same day, as they were in this case, in the Court's judgment it would be ridiculous to hold that appointment before service constitutes "an irregularity."

This Rule further requires that the guardian *ad litem* shall either be a member of the bar or some other responsible and disinterested person. Mr. Farrell is, and was, a member of the bar. Also, the guardian *ad litem* is charged with investigation

of the facts of the case and required to report his findings to the Court in writing; provided, however, that "if such parent has consented to the proceeding, it shall only be necessary for the guardian to investigate and report to the court whether such parent understands the legal effect of the proceeding and consents thereto." Accordingly, if Petitioner's consent filed in this case was valid and legally effective, the responsibility of the guardian *ad litem* was limited. In such a case, he must ascertain merely whether the parent "understands the legal effect of the proceeding and consents thereto." Mr. Farrell did make a report to the Court, which is filed in this proceeding, entitled "Answer of the Guardian *ad litem.*" Whether the report complies with the requirements of this Rule and, as indicated above, whether the consent is valid and legally effective will be considered at the conclusion of this opinion.

(6) Rule D78 provides for a decree of guardianship with right to consent to adoption. An interlocutory decree is unnecessary. Under Section b, if a petition for adoption has not been filed within one year after the date of the guardianship decree, the guardian must file a written explanation of the delay within this proceeding was signed, it would be absolutely final; "that she would be no more relation to the child than I was, that this was final for all purposes and for all times." Mr. Farrell also testified that "to the extent that any girl of comparable age would understand" he had explained to Petitioner and she understood the legal effect of this proceeding, and of her consent. That is the important consideration – not whether she comprehended the various legal technicalities involved in this and subsequent proceedings. Accordingly, the Court finds, as a fact, that Petitioner fully understood the legal effect of this proceeding.

Was Petitioner's consent valid and legally effective? Again, the Court does not have the benefit of any testimony from

Petitioner. At the time of this hearing, Petitioner was nineteen years of age. When the petition was filed in this case she was slightly over seventeen years of age. She was about to begin the 12th grade at the Towson Senior High School. Obviously she was at least of average intellect. Her reasons for putting her child out for adoption were understandable. In taking the first step in that direction, she had the approval of the natural father of the child and apparently the advice of a friend, a mature married woman, Mrs. Eldredge. Six weeks after such first step and immediately after she and Mr. Hale visited with the child, Petitioner was fully apprised by Mrs. Parlett of the effect of the consent before it was executed by her. The Court was impressed by Mrs. Parlett. She is a highly competent and dedicated case worker. What is even more important, she obviously takes a great personal interest in these cases and in the girls involved. Finally, the effect of her consent was explained to her fully and graphically by Mr. Farrell. There is no testimony whatsoever that the consent was procured as a result of deceit practiced upon her, or because of some mistake on her part. The circumstances surrounding the execution of the release on July 13, 1964 and the reaffirmative of such consent to Mr. Farrell on September 10, 1064, did not constitute an irregularity, or in the words of the Court of Appeals, "surprise, which means a taking unawares." As the Court finds that there was no irregularity in any other phase of this proceeding, Petitioner's motion must be denied.

The Court will sign an appropriate order when it is presented by counsel.

Kenneth C. Proctor,

Judge.

## CERTIFICATE OF SERVICE

This is to certify that on this 22 day of May, 1968, a true and correct copy of the foregoing petition for writ of certiorari to the Court of Appeals of Maryland was served upon counsel for Respondents R. Bruce Alderman, Harris James George, and Jean G. Rogers, by depositing copies thereof in the United States Mail, Certified Return Receipt Requested, addressed to each of them at their last known address.

Louis Peregoff
Counsel for Petitioners

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IN THE

# Supreme Court of the United States

October Term, 1968

No. 120

ANTHONY F. PALMISANO, LYDIA MAE PALMISANO, and MADONNA AGATHA HALE,

*Petitioners,*

*vs.*

BALTIMORE COUNTY WELFARE BOARD,

*Respondent.*

On Petition for a Writ of Certiorari to the Court of Appeals of Maryland

## BRIEF FOR RESPONDENT IN OPPOSITION

R. Bruce Alderman,
County Solicitor

Harris James George,
Deputy County Solicitor

Jean G. Rogers,
Assistant County Solicitor

Counsel for Respondent,
County Office Building
Towson, Maryland 21204

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*Petitioners,*

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BALTIMORE COUNTY WELFARE BOARD,

*Respondent.*

On Petition for a Writ of Certiorari to the Court of Appeals of Maryland

## BRIEF FOR RESPONDENT IN OPPOSITION

### Opinions Below.

The opinion of the Circuit Court for Baltimore County (App. B5) is not reported. The opinion of the Court of Appeals of Maryland, set forth in Appendix A of the Petition, is reported at 238 A.2d 251 (Md. 1968).

## Statutes and Rules Involved.

The pertinent text of the statutes and rules involved is set forth in Appendix A, infra, pp. 1-4. The statutes and rules are contained in the Annotated Code of Maryland, 1957 as follows: Art. 16, Sec. 72, Vol. 2, p. 86; Art. 16, Sec. 74(h), Vol. 2, p. 88; Rule D71b, Vol. 9B, p. 379; Rule D73, Vol. 9B, p. 381; Rule D74a, b, and c1, Vol. 9B, pp. 381-382; Rule D75a, Vol. 9B, p. 382; Rule D78a, Vol. 9B, p. 384.

## Statement.

In July of 1964, the Baltimore County Welfare Board (hereinafter called "Welfare Board") was requested by Petitioner Madonna Agatha Hale (hereinafter called "Donna") to plan for adoption placement of her child, Madonna Peggy Hale, born May 28, 1964. Donna was 17 years of age, unmarried, and a high school student at the time of the child's birth.

The Welfare Board, an agency of the State of Maryland, customarily initiates adoption planning for a child by obtaining guardianship with the right to consent to adoption of the child. After obtaining guardianship, the Welfare Board proceeds to place the child in an adoptive home. Under the Maryland Rules of Procedure, Annotated Code of Maryland, 1957, Vol. 9B, the procedure for obtaining guardianship with the right to consent to adoption is as follows:

(1) the filing of a consent to adoption, signed and verified by the mother of the child born out of wedlock, Rule D73, p. 381, (App. A2);

(2) the filing of a petition for guardianship with the right to consent to adoption, Rule D71b, p. 379 (App. A2);

(3) service of a show cause order on the natural mother, which order states that a petition for guardianship with the right to consent to adoption has been filed, the name of the person for whom such guardian is to be appointed, the date on or before which cause to the contrary shall be shown,

and the date on or before which service shall be made, Rule D74a, b, c, pp. 381-382 (App. A2-3);

(4) appointment by the court of a guardian *ad litem*, who must be a member of the bar or other responsible and disinterested person, for the natural parent who is under 18 years of age, Rule D75a, p. 382 (App. A3);

(5) verification by the guardian *ad litem* that the natural parent understands the legal effect of the proceeding and consents thereto, Rule D75a, pp. 382-383 (App. A3);

(6) the signing of a guardianship decree at the expiration of the show cause date, Rule D78a, p. 384 (App. A4).

The passing of a decree of guardianship with the right to consent to adoption terminates parental rights. Thereafter, a parent is prohibited from withdrawing his consent to adoption. Sec. 72 and 74(h), Art. 16, Annotated Code of Maryland, 1957, Vol. 2, pp. 86, 88 (App. A1-2).

Pursuant to Donna's request that the Welfare Board plan for the adoption placement of her child, the Welfare Board prepared to petition for guardianship of the child. Donna signed the required consent to adoption on July 31, 1964. At that time, Donna was told by her social worker, Mrs. Genevieve Parlett, that signing the consent constituted the first step in the guardianship proceedings; that further steps would be required, including the signing of a show cause order and the appointment of a guardian *ad litem;* and that the appointment of a legal guardian for the child would be the final act (R.35-36).

On September 10, 1964, a petition for guardianship with the right to consent to adoption of Madonna Peggy Hale was filed

by the Baltimore County Welfare Board, and Donna was served with a show cause order by Mrs. Parlett. Mrs. Parlett explained to Donna that she had until the time on the show cause order to change her mind or object, either in person or by attorney, to the guardianship proceeding. (R.64-65).

On the same day, a guardian *ad litem*, John Farrell, was appointed. Mr. Farrell was and is a member of the bar, employed by the Probation Department of the Circuit Court for Baltimore County. When Mr. Farrell interviewed Donna, he informed her that "once the decree was signed in this proceeding, that it would be absolutely final, that she would be no more relation to the child than (he) was, that this was final for all purposes and all times." (R.93-94).

Donna affirmed to Mr. Farrell that she would still be willing to execute a consent like the one she had previously signed. (R.97-98). This consent stated that the natural mother,

> "being unable to provide her (the child) with the proper care, do(es) hereby request the Baltimore County Welfare Board to plan for adoption placement of this child. I voluntarily surrender Madonna Peggy Hale to the Baltimore County Welfare Board, thereby relinquishing all of my parental rights and privileges. I have made the decision after careful consideration and my consent to adoption is given of my own free will and volition without any undue influence being exerted upon me and without any promise of compensation or reward either expressed or implied being extended to me. I hereby waive notice of any proceeding relative to the adoption of my child. I hereby agree to do any and all other

actions that may be required to facilitate the adoption of the child." (App. B7-8).

A decree granting guardianship of Madonna Peggy Hale to the Baltimore County Welfare Board was filed October 20, 1964. The child had been placed in a foster home, and some months following the granting of the guardianship decree, her foster parents petitioned to adopt her. A final adoption decree was passed November 15, 1965.

Petitioners' motion to strike was filed February 10, 1966, over a year after the signing of the guardianship decree and three months after the signing of the adoption decree.

Although living with her parents before, during and after her pregnancy, Donna kept her condition secret from her parents. At Donna's insistence, her parents were not notified of the guardianship proceedings by the Welfare Board. Donna, Ralph Hale (the natural father of the child), and Mrs. Eldridge, a friend of the Palmisanos', all represented to the Baltimore County Welfare Board that Mrs. Palmisano was "an impossible woman who . . . cuts a wide swath socially but makes everybody around her miserable," who had rejected Donna, who in fact blamed Donna for her mother's miscarriage of a baby boy, and who was an emotionally disturbed woman. (Pet. App. A6).

At no time during the trial below was this description of Mrs. Palmisano repudiated by Petitioners or their witnesses. At no time did Donna testify that she was misinformed, inadequately informed, mistaken, unaware of what she was doing during the course of the guardianship proceedings, or that she did not wish her child to be adopted. In fact, Donna did not choose to testify at all, although she was free to do so.

Finding that all procedural requirements for obtaining the guardianship had been met and that Donna was aware of the

legal consequences of her acts, the lower court denied Petitioners' Motion to Strike. The Court of Appeals of Maryland affirmed the decision of the lower court.

The decisions below are correct. There is no conflict or other ground justifying further review by this court.

## ARGUMENT

### I.

### No Federal Question Has Been Preserved for Review by This Court

Neither of the questions presented for review in the Petition was raised in the proceedings below. The sections of pleading set forth on page 6 of the Petition to show how federal questions were presented relate to the proper interpretation of state law, and in no way refer to any federal issue or denial of due process of law.

The sole reference to due process of law cited by Petitioners from the proceedings below is contained in the quotation from the pleadings on page 7 of the Petition, which reads as follows:

> ". . . Anthony F. Palmisano and Lydia Mae Palmisano were at all times available to process and were denied their parental rights and duties to comfort and guide their minor daughter. . . in an hour of her greatest need, in violation of their constitutional rights and of due process of law. . . "

This issue is now, of course, moot. No new decision could restore the lost rights complained of, Donna's "hour of greatest need" having long since passed, "and this Court does not sit to decide arguments after events have put them to rest." *Doremus v. Bd. of Education*, 342 U.S. 429, 433. However, even if the issue were not moot, it could not be considered by this Court

because it was not presented to the Maryland Court of Appeals for a ruling. *Stembridge v. Georgia*, 343 U.S. 541, 546.

It is no oversight that Petitioners have failed to set forth pertinent quotations or summaries thereof from their argument to the Court of Appeals of Maryland to show that the federal questions were timely and properly raised as required by Supreme Court Rule 23.1 (f). The simple fact is that such questions were never mentioned in the appeal below.

The argument under the second question in Petitioners' brief to the Court of Appeals purportedly preserved the constitutional issues for review by this Court. Yet that question asked only, "Can an infant, under disability, consent to anything absent the approval of her natural guardian?", and the entire argument under the question was devoted, not to constitutional issues, but to the proper interpretation of state law. Not once in the course of the argument was reference made to the federal constitution or due process of law, nor was there any intimation that federal questions might be involved.

It is settled that this Court will not pass upon the constitutionality of a state statute before the state courts have had an opportunity to do so. *Adler v. Bd. of Education*, 342 U.S. 485, 496. Therefore, no federal question is properly before this Court.

## II.

## No Substantial Federal Question Has Been Raised in the Petition

Assuming, *arguendo*, that the questions presented in the Petition were seasonably raised and preserved for review, they do not present a substantial federal issue.

(a) The first question raised by the Petition asks whether due process requires notice to the natural guardians of a minor mother before a mother can consent to the adoption of her illegitimate child. It is not clear, under this question, whether Petitioners are challenging the constitutionality or the interpretation of the statute by the Maryland Courts. If Petitioners are challenging the interpretation of the statute, then it is apparent that they have no basis for this appeal, as this Court is bound by the interpretation of Maryland statutes by the Maryland Court of Appeals. *Cramp v. Bd. of Public Instruction*, 368 U.S. 278, 285; *Kingsley Corp. v. Regents of U. of N.Y.*, 360 U.S. 684, 688.

If Petitioners are challenging the constitutionality of the statute, then they have cited neither reason nor authority which supports their position. The reason assigned for review of the first question is that Donna was denied due process of law when a guardian was appointed for her child without the knowledge and consent of her parents and without notice to her parents of the guardianship proceedings. The necessity for notice to the natural guardians of a minor mother before the mother can *consent* to the adoption of her illegitimate child, the sole issue presented by the first question, is nowhere mentioned.

Furthermore, the cases and authorities cited by Petitioners in support of their position are immaterial to the question presented. At most, the citations affirm that parents should receive notice of any proceeding relative to the custody or adoption of their children, and that the parent - child relationship should be protected from arbitrary governmental intrusion.

With these principles, Respondent heartily agrees. The Maryland legislature has been meticulous, in accordance

with the law cited by Petitioners, in providing for notice to parents in adoption and guardianship proceedings. Rule D74 c1, Annotated Code of Maryland, 1957, Vol. 9B, p. 382, states:

> "If the person to be adopted, or for whom a guardian with the right to consent to adoption is to be appointed, is a minor, the show cause order shall be served on the parents, or the mother of a child born out of wedlock, in the manner provided by Rule 104 (Service of Process – Generally), or Rule 105 (Process by Publication), whichever shall apply. An additional copy of the show cause order shall also be served, in the manner provided by Rule 119 (Service of Process – Person under Disability), where – both parents are under disability or the mother of a child born out of wedlock is a person under disability and their or her consent is not filed with the petition. No copy of the petition shall be served or published."

The committee note immediately following this Rule establishes that the requirements of due process were carefully considered in the drafting of the Rule. The note explains:

> "The purpose of this Rule is to assure the protection of due process to the natural parent whose rights will be terminated by the proceeding and at the same time to give adopting parents and adopted child the protection of a binding decree. Thus service of the show cause order on the natural parent may not be waived by the parent. Where the natural parent of an infant has previously consented to termination of parental rights, however, there does not seem to be any need to inform the parents of such natural parent of the proceeding, even if the natural parent is a person under disability."

In the instant case, the natural parent was unquestionably served with notice.

Petitioners seem to complain that a failure to require notice to *grandparents* in proceedings relative to the adoption or guardianship of their grandchildren is unwarranted governmental intrusion of the relationship between parent and child. Actually, Petitioners are complaining a *lack* of intrusion.

They are maintaining, contrary to the authority they cite, that a minor mother cannot be free to decide the future of her child for herself, but that the state must compel her to submit to the decision of her parents in this matter—even if their decision results in a *forced* parent - child relationship harmful to both mother and child.

Petitioners are further maintaining, in effect, that the state must force a disclosure of facts by a minor to her parents, even when such disclosure could result in emotional or physical injury to the minor. This position runs counter to the whole thrust of the Maryland law relating to minors, which is based upon the principle that the welfare of the child is paramount, even over the rights of its parents. *Burns v. Bines*, 189 Md. 157, 162, 55 A.2d 487, 489, (1947), *Winter v. Director of Department of Welfare*, 217 Md. 391, 395-396, 142 A.2d 81, 83, cert. denied, 358 U.S. 912. The Maryland law is entirely consistent with the position of this Court, which has affirmed that:

> ". . . neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth's well being, the state as parens patriae may restrict the parent's control. . ." *Prince v. Massachusetts*, 321 U.S. 158, 166.

The Court of Appeals of Maryland did not find that the failure of the Welfare Board to notify the grandparents of the guardianship proceedings denied any protection of the

law to Donna. On the contrary, under the circumstances of this case, where Donna's mother was represented to be abusive and emotionally disturbed, the Court held that "Mrs. Parlett, the social worker, was under no obligation to inform Donna's parents and to do so would, in fact, derogate from her duty to protect the interests of Donna and her baby." (Pet. App. A6).

While the Maryland statute does not *require* notice to grandparents in guardianship proceedings, neither does it *prohibit* such notice. If, in this case, Donna was denied a right to the "guidance, counsel, and comfort" of her parents, or if her parents were denied a right to "guide and comfort" their daughter, that right was denied not by the law but by Donna herself. She was living with her parents and was at all times free to confide in them, yet she chose not to do so. Rather, she reportedly threatened suicide if they were informed of her pregnancy (R.133-134). Petitioners have cited no authority, and Respondents know of none, which would compel notice to grandparents in such a situation.

(b) The second question presented in the Petition asks whether a state statute which allows a guardian *ad litem* for a minor mother to supersede the rights of natural parents without determining that the natural parents and guardians are unfit, is repugnant to due process of law. This characterization of the statute begs the question, inasmuch as there is no basis for assuming that a guardian *ad litem* supersedes the rights of natural parents.

Under the Maryland guardianship statute, the function of a guardian *ad litem* is strictly limited, as the guardian is only required to investigate and report to the Court whether a minor parent understands the legal effect of the proceeding and consents thereto (App. A3). A guardian *ad litem* must be appointed for a minor mother whether or not her parents know of the

proceeding – not in derogation of the rights of her parents, but as an additional protection for the minor. His report assures the Court that the minor has arrived at her decision knowledgeably and free from coercion by parents, relatives – or institutions.

Petitioners unaccountably assume that the appointment of such a guardian deprives the natural parents of the custody of their child,[1] even though, by their own admission, Donna lived with and was supported and maintained by her parents throughout the entire guardianship proceeding.

Clearly, the appointment of a guardian *ad litem* neither deprives a parent of the custody of his child nor supersedes parental rights. Since the second question assumes non-existent law and facts, it does not present a substantial issue for consideration by this Court.

Moreover, even assuming that the statute deprived Donna's parents, without due process of law, of rights which they possessed by virtue of her minority, that issue has become moot. Any such rights were extinguished when Donna attained her majority on March 26, 1968 (Pet. 4).

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1 Page 14 of the Petition contains the statement: " . . . a statute divesting a natural parent and guardian of the custody of his minor daughter is a denial of due process of law. . ."

## Conclusion.

Neither of the questions presented by the Petition was raised or preserved in the proceedings below. Petitioners have failed to cite either reason or authority which supports review of the first question presented; the second question assumes non-existent law and facts. Neither question presents a substantial federal issue. Therefore, the Petition for a writ of certiorari should be denied.

Respectfully submitted,

R. Bruce Alderman
County Solicitor

Harris James George
Deputy County Solicitor

Jean G. Rogers
Assistant County Solicitor

Counsel for Respondent.

325 County Office Building
Towson, Maryland 21204

June 21, 1968

## APPENDIX A.

## STATUTES AND RULES

**Statutes:**

**Annotated Code of Maryland (1957 Ed):**

Article 16, Section 72: "A petition for adoption, as hereinafter described, may be preceded by a petition for guardianship with the right to consent to adoption, and such guardianship decree, which the courts having jurisdiction of adoption matters may require and shall have power to grant after such hearing and investigation as the court may deem appropriate, shall terminate natural parental rights, and the duly appointed guardian's consent to an adoption, for which the petition may be filed in the same proceeding, shall eliminate the necessity of further notice to the natural parent or parents. In all respects not mentioned in this section, adoption proceedings preceded by a guardianship petition, as herein described, shall conform to the procedure outlined in this subtitle and in the Maryland Rules for adoptions generally."

Article 16, Section 74(h): "The State Department of Public Welfare or its local unit within the jurisdiction of the court, in any condition of fact not hereinbefore covered.

"Any consent obtained under the provisions of this section may be revoked and cancelled at any time before final decree, but not after a guardianship decree under Sec. 72 above, if one be had, or not after an interlocutory decree, if one be had.

"Minority of a natural parent shall not place such parent under a disability in adoption or guardianship with the right to consent to adoption proceedings and such parent, if he has attained the age of eighteen (18) years, may give a valid

consent to adoption or guardianship with the right to consent to adoption and/or joins as a party in such proceedings and, shall be considered sui juris and no adoption or guardianship with right to consent to adoption shall be invalidated because of the minority of a natural parent."

**Rules:**

**Maryland Rules of Procedure:**

Rule D71b: "A person authorized by law to become a guardian with the right to consent to adoption may file a petition for guardianship with the right to consent to adoption."

Rule D73: "A decree of adoption or of guardianship with the right to consent to adoption shall not be entered until there has been filed in the proceeding the signed and verified consent required by law, or unless the court shall have found after hearing that a consent required by law had been withheld contrary to the best interests of the child."

Rule D74a: "Upon the filing of a petition for guardianship with the right to consent to adoption, or of a petition for adoption, the court shall enter a show cause order thereon. A show cause order need not be entered, or served as provided for in section c of this Rule, however, if all parties entitled to service of the show cause order under section c of this Rule have joined in the petition."

Rule D74b: "The show cause order shall state only that a petition for adoption or for guardianship with the right to consent to adoption has been filed, the name of the person to be adopted, or for whom a guardian with the right to consent to adoption is to be appointed, or, if he has no name, the names of his parents, or of the mother of a child born out of

wedlock, the date on or before which cause to the contrary shall be shown, and the date on or before which service shall be made. The order shall not state the name of the petitioner or the titling of the proceeding, but shall state the name of the court and the docket number of the proceeding, except that if the petition seeks appointment of a guardian with the right to consent to adoption or adoption of an adult the order shall also state the name of the petitioner."

Rule D74c1: "If the person to be adopted, or for whom a guardian with the right to consent to adoption is to be appointed, is a minor, the show cause order shall be served on the parents, or the mother of a child born out of wedlock, in the manner provided by Rule 104 (Service of Process– Generally), or Rule 105 (Process by Publication), whichever shall apply. An additional copy of the show cause order shall also be served, in the manner provided by Rule 119 (Service of Process – Person under Disability), where both parents are under disability or the mother of a child born out of wedlock is a person under disability and their or her consent is not filed with the petition. No copy of the petition shall be served or published."

Rule D75a: "If a parent whose child is to be adopted, or for whom a guardian with the right to consent to adoption is to be appointed, is a person under disability, the court shall appoint a guardian ad litem for such parent after service of the show cause order as required by Rule D74 (Notice). The guardian ad litem shall be a member of the bar, or other responsible and disinterested person, who shall investigate the facts of the case and report his findings to the court in writing; if such parent has consented to the proceeding, it shall only be necessary for the guardian to investigate and report to the court whether such parent understands the legal effect of the proceeding and consents thereto."

**Rule D78a: "The court may enter a final decree of guardianship with the right to consent to adoption without first having entered an interlocutory decree."**

## APPENDIX B

## MEMORANDUM OPINION AND ORDER OF THE CIRCUIT COURT FOR BALTIMORE COUNTY

This case comes on for hearing before the Court on the motion of Madonna Agatha Hale (formerly Donna Agatha Palmisano), herein called "Petitioner", and her parents to strike the order of this Court, dated October 20, 1964, under which the Baltimore County Welfare Board, herein called "the Board", was appointed legal guardian of Madonna Peggy Hale (minor child of Petitioner), with the right to consent to the adoption of such minor child, and the answer of the Baltimore County Welfare Board to such motion. Testimony was taken in open Court and arguments of counsel have been heard and considered.

### FINDINGS OF FACT

1. Madonna Peggy Hale was born on May 28, 1964, at the Harford Memorial Hospital, Havre de Grace, Harford County, Maryland. The mother of the child is Petitioner and the father is Ralph Hale. Petitioner was born on March 26, 1947. Ralph Hale was twenty years of age when the child was born.

2. Although Petitioner continued to live with her parents in Towson, Baltimore County, Maryland, until just a day or two prior to the birth of the child, her parents were unaware of the fact that she was pregnant and did not learn of the birth of the child until some months thereafter. After Petitioner became pregnant she and Ralph Hale agreed that they would do everything possible to keep their respective parents from learning of her condition. Approximately a month before the baby's birth they went to see Mrs. Patricia Eldredge, who lives in Towson,

for help. Mrs. Eldredge is a nurse and doctor's secretary. She and her husband have been friends of Petitioner for some time. At one time Mrs. Eldredge was friendly with Mrs. Palmisano. Mrs. Eldredge made arrangements for medical care for Petitioner in Havre de Grace. When Petitioner went into labor Mr. Hale and Mrs. Eldredge took her to the Harford Memorial Hospital. Petitioner's parents believed that she was in Ocean City, Maryland, with the Eldredges, on vacation. At the hospital, the young couple pretended that they were married. Mr. Hale signed the hospital releases as husband of Petitioner. The birth certificate showed the name of the child as indicated above.

3. Several days after the birth of the child, Petitioner returned to her parents' home. Over the weekend the baby was kept by a friend of Mrs. Eldredge. The young couple decided that the only possible solution to their problem was to place the infant for adoption. However, as they were fearful of contacting a Baltimore County agency, on June 1, 1964, they took the baby to the Harford County Welfare Board and requested foster care for her. On the same day, the baby was placed in the foster home of Mr. and Mrs. Howard Harry Cramer, as hereinafter noted, the adopting parents.

4. After the birth of the child the natural parents saw each other intermittently. However, beginning with approximately July 13, 1964 and continuing until about November 3, 1965, the only contacts between them were by telephone. On or about the latter date, they began seeing each other again. On January 6, 1966, they eloped to Elkton, Cecil County, Maryland, where they were married. Since their marriage, although they have been seeing each other, they have continued to live with their respective parents. For some time Petitioner has been employed as a cashier at Cinema I and Cinema II in Timonium, Baltimore County, Maryland. Ralph

Hale is now in his 4th year at the University of Baltimore and expects to complete his college education with the 1966 summer session. He is faced with the prospect of being drafted shortly thereafter. He testified that as soon as he has completed his education and service, if any, he and Petitioner plan to establish their own home. Necessarily, the time when this will come about is uncertain. Counsel for Petitioner offered to prove through Mr. Palmisano that he and his wife wish to have the child in their home, and are willing to take care of her until such time as the parents establish their own home.

5. The baby remained in the Cramer foster home from June 1, 1964 until approximately January 15, 1965. On or about the latter date, a couple in Harford County became interested in adopting the infant and she was placed with them as prospective adoptive parents. The infant lived with this couple until on or about May 8, 1965. On that date the infant was returned to the Cramers pending check of the prospective adoptive parents and their home. Sometime between May 8 and October 15, 1965, the prospective adoptive parents had marital difficulties and separated. Beginning with the latter date, 10/15/65, the Cramers have kept the child in their home as adoptive parents.

6. These proceedings were instituted on September 10, 1964, by a petition of the Board which asked that it be named as legal guardian with the right to consent to the adoption of the infant and with the right to request a change of name of the infant when desirable and that a guardian *ad litem* be appointed for the natural mother of the child. Along with the petition there were filed the following:

(a) Consent of the natural mother, dated July 13, 1964, signed and sworn to by her, in which it was recited that the natural mother "being unable to provide her (the child) with the proper care, do hereby request the Baltimore

County Welfare Board to plan for adoption placement of this child. I voluntarily surrender Madonna Peggy Hale to the Baltimore County Welfare Board, thereby relinquishing all of my parental rights and privileges. I have made this decision after careful consideration and my consent to adoption is given of my own free will and volition without any undue influence being exerted upon me and without any promise of compensation or reward either expressed or implied being extended to me. I hereby waive notice of any proceeding relative to the adoption of my child. I hereby agree and to do any and all other actions that may be required to facilitate the adoption of the child."

(b) Consent of Ralph Hale, dated September 4, 1964, signed and sworn to by him as the natural father of the child, in the same form as that just quoted.

(c) Summary of child's parents prepared by Mrs. Genevieve W. Parlett of the Board, dated September 9, 1964, and summary on child prepared by the same person and dated the same date.

(d) Birth certificate.

7. On September 10, 1964, this Court signed an order appointing John B. Farrell, attorney, as guardian *ad litem* for Petitioner, the order providing that "said attorney shall comply with the provisions of Rule 1175, Maryland Rules of Procedure, 1958 Edition, as amended (now Rule D75)." On the same date, Judge Raine signed a show cause order pursuant to Maryland Rule 1174 (now Rule D74). Under this order Petitioner was ordered to show cause on or before October 15, 1964, why the adoption of Madonna Peggy Hale should not be decreed provided a copy of such order be served on Petitioner on or before September 24, 1964, and Genevieve W. Parlett was appointed to serve such order upon Petitioner and to make

proof of service by affidavit. This order was served upon Petitioner by Mrs. Parlett on September 10, 1964. Proof of service was filed in these proceedings on September 11, 1964. There is some confusion as to the sequence of events which took place after Judge Raine signed the two orders referred to above. Mrs. Parlett testified that her first recollection was that service took place just outside the Court House after Mr. Farrell, as guardian *ad litem*, interviewed Petitioner. Mr. Farrell was under the impression that the show cause order had already been served at the time of the interview. Mrs. Parlett's recollection was that Mr. Farrell interviewed Petitioner by herself. Mr. Farrell testified that most of the interview took place in the presence of Mrs. Parlett and Mr. Hale, as well as Petitioner; that he did ask Mrs. Parlett and Mr. Hale to leave the room just before the interview was concluded. Mr. Farrell then asked her four or five additional questions.

8. On September 10, 1964, Mr. Farrell filed his answer as guardian *ad litem* on behalf of Petitioner. This recited that he interviewed Petitioner on September 10th in the presence of Mrs. Parlett; that he advised Petitioner of her rights "concerning the withdrawing of her release or consent at any time prior to the signing of a final adoption decree, and after being so advised, the said Donna Palmisano stated that she understood the finality of her action, to wit: That once signed, an adoption decree would forever terminate and extinguish any and all relationship between herself and her child, Madonna Peggy Hale, and place her in a position of a total stranger to the child, with no claim to her or rights to her whatsoever; that the Release executed by her on July 17, 1964, was free and voluntary, without undue influence, coercion, inducement or threat; that she was not paid any money by anyone to execute the said Release, and that, if required, she would again execute such a Release at this time; that during the aforementioned

interview, Donna Palmisano did reaffirm the matters and facts set forth in said Release dated July 17, 1964."

In his testimony, Mr. Farrell admitted that there were two errors in this answer: First, in two places the date of the consent or release is stated as July 17, 1964, whereas it should have been July 13, 1964, and second, in two places the words "adoption decree" were used, whereas the word "adoption" was not used by him in this connection.

9. Mr. Farrell testified that this answer is actually a form used by him; that in the interest of time he gives his secretary an answer from a previous case and merely changes the name of the infant, the date of the interview, those present at the interview and the date of release or consent to the facts of the present case. In all other respects the answer is exactly the same in each case. So far as reference to a future decree is concerned, Mr. Farrell testified that he tells each girl "that when a decree is signed they will not be any more related to this child than I am, that when that happens it is over for all times." He does not explain that there is a guardianship decree which in his words "cuts off their rights" or that after that decree is signed, the child is placed in an adoptive home and then there is a final adoption decree. Mr. Farrell testified that his understanding of his responsibilities under Maryland Rule 1175 (now D75) are "first, to satisfy my own mind that the infant defendant knows exactly what she is doing, and secondly, to determine from her that day if she is ready to reaffirm her position." i.e., whether she would on the date of the interview be willing to execute the release. Mr. Farrell further testified that he usually advises the girl that she has until such and such a date under the terms of the show cause order to file an answer if she wishes; that until that date she has a right to change her mind; that he probably did this with Petitioner.

Mr. Farrell's testimony makes it clear that he explained to Petitioner and Ralph Hale that once this matter is final, "you cannot get your baby back"; that even if they married subsequently "there is no chance of getting the baby back." Apparently, Hale's release was obtained at the suggestion of Mr. Farrell because of the expressed wish of the young couple to marry as soon as they could.

Although he usually inquires of the natural mother why she is giving up her baby, he did not do so in this case. He could not recall whether he advised Petitioner that the object of the interview was to decide whether or not she had reason to show cause why the adoption should not be decreed. He had nothing in his notes to indicate this one way or the other. He further testified that "to the extent that any girl of comparable age would understand" he had explained to Petitioner and she understood the legal effect of the proceedings and her consent. In summation of his interview, Mr. Farrell, in response to a question from the Court, stated "I told her that, once the decree was signed in this proceeding, that would be absolutely final. That she would be no more relation to the child than I was, that this was final for all purposes and all times." He did not tell Petitioner that a guardian would be appointed if she raised no objection by October 15, 1965. Nor did he tell her that the guardian would have the absolute right to consent to adoption. Nor did he tell her that the guardian would have the right to seek a change of the child's name. Nor did he tell her that after the decree appointing a guardian was signed, she could not see her child.

Mr. Farrell testified that he specifically asked Petitioner whether she would, at that time, be willing to sign a release like the one executed on July 13th if he then and there asked her to do so, to which she responded "Yes".

Mr. Farrell did not recall telling Petitioner that the consent of July 13th was a waiver of any notice to her of any proceeding relative to the adoption of the child, or that, by such consent, she agreed to any and all other things required to facilitate the adoption of the child. Mr. Farrell testified that in his judgment Petitioner understood the significance of the consent which she had given, but that he did not explain the legal significance of the things she had said therein.

The interview lasted about twenty minutes. Mr. Farrell's longhand notes consisted of about one-half letter sized page.

10. Mrs. Genevieve W. Parlett has been a case worker for the Board since 1953. Prior to that she had been with the Baltimore City Welfare Board from 1935 to 1940 and with the Board from 1940 to 1941. She had first seen Petitioner on July 1, 1964, from 3 to 6 p.m., at the home of Mrs. Eldredge. Sometime in the second week in June, her supervisor had given her a telephone request from the Harford County Welfare Board for institution of legal proceedings preliminary to an adoption – for the appointment of a guardian with the right to consent to adoption. She did not learn the name of the couple in whose home the baby had been placed, viz., the Cramers, until November, 1965. She had, however, learned of the placement in a prospective adoptive home and had been under the impression that the adoption had taken place and that the adopting parents and the child had moved to California. On July 6, 1964, Petitioner came to the Board with Ralph Hale and for about an hour and a half had discussed with Mrs. Parlett her problem and her plans for the baby, viz., adoption. Petitioner asked whether she could visit the baby. Mrs. Parlett telephoned the Harford County Welfare Board and made an appointment for that purpose and advised Petitioner that she could see the baby on the morning of July 13, 1964, at the offices of the Harford

County Welfare Board. Petitioner and Ralph Hale visited with the baby on that date and at that place. That afternoon, Petitioner came to the offices of the Board and signed the consent. Mrs. Parlett explained the effect of the consent; that this was the first step; that further steps would be required, including the signing of a show cause order and the appointment of a guardian *ad litem*. Mrs. Parlett told Petitioner that the appointment of a legal guardian for the child would be the final act. Mrs. Parlett did not tell her that any time prior to legal adoption Petitioner could change her mind. Petitioner was with her for between one hour and one hour and one-half. Mrs. Parlett was quite definite the Petitioner understood what she told her on July 13th and the effect of her action.

Sometime during the week prior to November 3, 1965, Mrs. Parlett received a telephone call from a Probation Officer in Baltimore City inquiring about the child on behalf of Edward J. Angeletti, Esq., an Assistant State's Attorney in Baltimore City. On November 3, 1965, Mr. Angeletti telephoned Mrs. Parlett and advised her that Petitioner had come to see him and was "pining to get her baby back." Mrs. Parlett had last seen Petitioner in September, 1964. Because of this information Mrs. Parlett was concerned for Petitioner's emotional state. The conversation with Mr. Angeletti lasted fifteen or twenty minutes. That night Mrs. Parlett telephoned Ralph Hale and inquired about Donna. He told Mrs. Parlett that for some time he had no contact with Donna. On Friday, November 5th, Mrs. Parlett telephoned Mrs. Brown, a case worker of the Harford County Welfare Board, and apprised Mrs. Brown of her talk with Mr. Angeletti. Some two weeks after her initial talk with Mr. Angeletti, not having heard from him, Mrs. Parlett telephoned him. He told Mrs. Parlett that he had suggested to Petitioner that she contact Mrs. Parlett. He told Mrs. Parlett that he expected Petitioner in his office

within a few days and would then call her. At about 9:15 p.m. on November 16th, at the request of Petitioner, Mrs. Parlett met her at her place of employment. The object of the conversation was to reconcile Petitioner to the loss of her child.

11. Proceedings for the adoption of the child were filed in the Circuit Court for Harford County on November 9, 1965. Four days previously, on November 5, 1965, at the request of the Harford County Welfare Board, the Board had executed and sent to Harford County the necessary consent to adoption. On November 15, 1965, Judge Stewart Day signed an order decreeing that "the minor child, Madonna Peggy Hale, is hereby made and declared to be the legally adopted child of Howard Harry Cramer and Annie Laura Kidd Cramer, his wife, and it is further ordered that the name of the child be and it is hereby changed to Janie Kay Cramer." On November 12, 1965, the Board executed and sent to the office of the County Solicitor a report that "Madonna Peggy Hale was placed in an adoption home by the Harford County Welfare Board. That the agency reports that the adoption is not yet final although the petition is filed. They are requesting an extension of the legal guardianship." This was not filed in these proceedings until November 17, 1965.

12. The first notice to this Court that the order of October 20, 1964, might be questioned was the entry on December 15, 1965 of the appearance of Louis Peregoff as attorney for Petitioner and her parents.

13. The Petitioner, represented by competent counsel, elected not to testify. The County elected not to call her to the stand. The Court was of the opinion that to ask her to take the stand as a Court's witness would have constituted interference with the rights of trial counsel.

## THE LAW

On February 24th, 1961, Judge J. Gilbert Prendergast handed down an opinion in "Ex Parte, In The Matter of the Petition of the Maryland Children's Aid Society, Inc., et al., for Guardianship with the Right to Consent to Adoption of a Minor." (Circuit Court No. 2 of Baltimore City, Docket 5 AD, Folio 121, File No. 5271 AD.) In that case, the girl under the age of 21 years had given birth to an illegitimate child in Washington, D.C. Fifteen days after the birth of the child, the mother gave the care and physical custody of the child to the Society. The mother of the natural mother of the child was fully aware of the birth, and was willing to accept the child in her home. The Society was aware of this. Six weeks after the birth of the child, the natural mother signed a petition asking that the Society be appointed guardian with the right to consent to the adoption of her child. On the same date, a final order awarding such guardianship to the Society was signed. No guardian *ad litem* was appointed in spite of the fact that the natural mother was "under disability." Subsequently, the natural mother relented and sought to set aside the appointment of the guardian. No adoption proceedings had been filed.

Judge Prendergast had no difficulty in finding that there was an irregularity in obtaining the decree in that, the natural mother being "under disability", a guardian *ad litem* should have been appointed to advise and represent her, and accordingly set the decree aside.

Subsequent to this decision, the State Department of Welfare determined that it was desirable to amend the Code, Article 16, Section 74, dealing with consents in adoption proceedings. H. Emslie Parks, Esq., a lawyer, who was a member of the Advisory Committee on Adoption of the State Department of

Welfare, was asked to draft the necessary legislation. This he did with the assistance of Dr. Carl N. Everstine, of the Department of Legislative Reference. Mr. Parks has been an attorney at law since 1956. He specializes in adoption cases. For several years after his admission to the bar, he was a Staff Assistant to the Standing Committee on Rules of Practice and Procedure of the Court of Appeals of Maryland, and worked with the Subcommittee which drafted the adoption rules. The bill prepared by Mr. Parks was introduced as Senate Bill 276, and was enacted, without any change whatsoever, as Chapter 173 of the Laws of 1963. Mr. Parks testified concerning this bill and the legislative intent in its enactment. He stated that, after the opinion of Judge Prendergast referred to above, it became necessary to appoint guardians *ad litem* in all cases involving natural mothers under 21 years of age; that the sole object of the amendment was to make it unnecessary to appoint guardians *ad litem* for natural mothers eighteen years of age and over; that it was definitely not intended to invalidate consents of natural parents under eighteen years of age.

Petitioner's attorneys objected to testimony from Mr. Parks on the ground that the legislation was clear and unambiguous, and that, therefore, testimony as to legislative intent was not required. It is the opinion of the Court that the last paragraph of Section 74 of Article 16, as amended, by the laws of 1963, is not free from ambiguity and that such testimony was admissable. The last paragraph, as amended, reads as follows:

> "Minority of a natural parent shall not place such parent under a disability in adoption or guardianship with the right to consent to adoption proceedings and such parent, if he has attained the age of eighteen (18) years, may give a valid consent to adoption or guardianship with the right to consent to adoption and/or join as a party in such proceedings and shall be considered sui juris and no adoption or guardianship with

right to consent to adoption shall be invalidated because of the minority of a natural parent."

Maryland Rule 625a, "Revisory Power of Court over Judgment," reads as follows: "For a period of thirty days after the entry of a judgment, or thereafter pursuant to motion filed within such period, the court shall have revisory power and control over such judgment. After the expiration of such period, the court shall have revisory power and control over such judgment, only in the case of fraud, mistake or irregularity."

The Court of Appeals has said that this rule merely restates, in substance, the rule at common law, *Pumphrey v. Grapes*, 215 Md. 573, 575. In *Tasea Investment Corp. v. Dale*, 222 Md. 474, 477-480, the Court of Appeals had to consider the effect and application of this rule. It was held that after a decree has become enrolled, one seeking to set aside such decree must produce, "clear and convincing proof," of the basis asserted for such action. The Court described the present rule as consolidating and simplifying the common law, that although, "deceit and surprise," have been eliminated as the grounds on which a decree may be set aside, fraud includes deceit, and irregularity encompasses surprise. As to the latter, the Court said, "And *surprise*, which means a taking unawares, has an affinity with irregularity in that the latter implies a departing from an established rule, method or usage, which might cause surprise."

In the instant case, Petitioner does not assert fraud as a ground for setting aside the order of October 20th, nor does Petitioner claim mistake. Accordingly, the sole basis on which the order in this case can be set aside – if such action is merited at all – is irregularity in the proceedings.

The pertinent Maryland Rules concerning adoption are as follows:

(1) Rule D71b, states who may file a Petition for Guardianship with Right to Consent to Adoption; "A person authorized by law to become a guardian with the right to consent to adoption may file a petition for guardianship with the right to adoption." There is no question but that the Board is such a person.

(2) Rule D72b, sets forth the requirements for the contents of such a petition. In doing so it incorporates by reference, Section a, *Petition For Adoption, 1. Contents;* "to the extent that such requirements are applicable, and such facts are known to the petitioner." In the judgment of the Court, the Petition in this case meets such requirements.

(3) Rule D73 provides: "A decree * * * of guardianship with the right to consent to adoption shall not be entered until there has been filed in the proceeding the signed and verified consent required by law, * * * "

There is no doubt that a "verified consent" signed and sworn to by Petitioner was filed in this proceeding. Petitioner contends, however, that such consent is not valid – is not legally effective. The Court will consider this contention later.

(4) Rule D74 is concerned with 'Notice". Section a provides that the Court shall enter a show cause order upon the filing of a petition, such as that involved in this case. Such an order was signed on September 10, 1964. Section b sets forth what the show cause order shall contain viz., (a) that a petition for guardianship with the right to consent to adoption has been filed; (b) the name of the person for whom a guardian is to be appointed (c) the date on or before which cause to the contrary shall be shown; and (d) the date on or before which service shall be made. The show cause order signed in this case fully complies with the provisions of this section.

Section c1, provides for service of the show cause order when, as in this case, the child for whom a guardian is to be appointed, is a minor. Service on the mother is required, the minor having been born out of wedlock. This section further provides that: "An additional copy of the show cause order shall also be served, in the manner provided by Rule 119 (Service of Process-Person under Disability), where both parents are under disability or the mother of a child born out of wedlock is a person under disability and their or her consent is not filed with the petition." The Court finds, as a matter of law, that the service contemplated by this portion of Section c was not required in this case if Petitioner's consent, filed with the petition, was valid and lawful. Failure to serve a copy of the show cause order in the manner provided by Rule 119 would constitute "an irregularity" if, and only if, Petitioner's consent filed with the petition was invalid and, therefore, ineffective.

(5) Rule D75 provides for the appointment, in a case such as this, of a guardian *ad litem* for a parent for whose child a guardian is to be appointed if such parent is "under disability", such appointment to be made after service of the show cause order. The Petitioner was under eighteen years of age when the petition was filed and was, therefore, "under disability." Although the Court finds that the guardian *ad litem* was appointed before the show cause order was served, rather than after such service as provided by the Rule, the Court finds, as a matter of law, that although the appointment of a guardian *ad litem* is mandatory, the time sequence of such appointment and such service is directory only. When appointment, service and interview by the guardian are all accomplished on the same day, as they were in this case, in the Court's judgment it would be ridiculous to hold that appointment before service constitutes "an irregularity."

This Rule further requires that the guardian *ad litem* shall either be a member of the bar or some other responsible and disinterested person. Mr. Farrell is, and was, a member of the bar. Also, the guardian *ad litem* is charged with investigation of the facts of the case and required to report his findings to the Court in writing; provided, however, that "if such parent has consented to the proceeding, it shall only be necessary for the guardian to investigate and report to the court whether such parent understands the legal effect of the proceeding and consents thereto." Accordingly, if Petitioner's consent filed in this case was valid and legally effective, the responsibility of the guardian *ad litem* was limited. In such a case, he must ascertain merely whether the parent "understands the legal effect of the proceeding and consents thereto." Mr. Farrell did make a report to the Court, which is filed in this proceeding, entitled "Answer of the Guardian *ad litem*." Whether the report complies with the requirements of this Rule and, as indicated above, whether the consent is valid and legally effective will be considered at the conclusion of this opinion.

(6) Rule D78 provides for a decree of guardianship with right to consent to adoption. An interlocutory decree is unnecessary. Under Section b, if a petition for adoption has not been filed within one year after the date of the guardianship decree, the guardian must file a written explanation of the delay with the Court. This was done promptly. Finally, "At any time the Court may terminate the guardianship by revoking the decree." The Court finds, as a matter of law, that the power of the Court to revoke is terminated by a decree of adoption which has become enrolled; that the only power that this Court now has in this respect, is that provided by Rule 625, the decree of the Circuit Court for Harford County dated November 15, 1965, having become enrolled.

The foregoing analysis of the applicable Statutes and Rules of Court makes it clear that the controlling question in this case is: Has Petitioner in this case produced "clear and convincing proof" that the consent signed and sworn to by Petitioner on July 13, 1964 was invalid and legally ineffective. This primary question requires consideration of a subsidiary point, viz.: Has Petitioner produced "clear and convincing proof" that she did not understand the legal effect of this proceeding. These will be discussed in inverse order.

Did Petitioner understand the legal effect of this proceeding? Petitioner elected not to give the Court the benefit of her testimony. Having failed to assert under oath that she did not comprehend the effect of this proceeding, she cannot complain if the Court infers from such silence that she did understand such effect. Although the procedure followed by Mr. Farrell fails to meet the wholehearted approval of the Court, that is not controlling, provided that, after his interview with Petitioner, she was bound to understand the finality of the guardianship proceeding and the effect of such proceeding on her natural rights as mother of the child. It is crystal clear to the Court that Mr. Farrell not once, but several times during the course of the interview, told Petitioner in so many words that once the decree in this proceeding was signed, it would be absolutely final; "that she would be no more relation to the child than I was, that this was final for all purposes and for all times." Mr. Farrell also testified that "to the extent that any girl of comparable age would understand" he had explained to Petitioner and she understood the legal effect of this proceeding, and of her consent. That is the important consideration – not whether she comprehended the various legal technicalities involved in this and subsequent proceedings. Accordingly, the Court finds, as a fact, that Petitioner fully understood the legal effect of this proceeding.

Was Petitioner's consent valid and legally effective? Again, the Court does not have the benefit of any testimony from Petitioner. At the time of this hearing, Petitioner was nineteen years of age. When the petition was filed in this case she was slightly over seventeen years of age. She was about to begin the 12th grade at the Towson Senior High School. Obviously she was at least of average intellect. Her reasons for putting her child out for adoption were understandable. In taking the first step in that direction, she had the approval of the natural father of the child and apparently the advice of a friend, a mature married woman, Mrs. Eldredge. Six weeks after such first step and immediately after she and Mr. Hale visited with the child, Petitioner was fully apprised by Mrs. Parlett of the effect of the consent before it was executed by her. The Court was impressed by Mrs. Parlett. She is a highly competent and dedicated case worker. What is even more important, she obviously takes a great personal interest in these cases and in the girls involved. Finally, the effect of her consent was explained to her fully and graphically by Mr. Farrell. There is no testimony whatsoever that the consent was procured as a result of deceit practiced upon her, or because of some mistake on her part. The circumstances surrounding the execution of the release on July 13, 1964 and the reaffirmative of such consent to Mr. Farrell on September 10, 1964, did not constitute an irregularity, or in the words of the Court of Appeals, "surprise, which means a taking unawares." As the Court finds that there was no irregularity in any other phase of this proceeding, Petitioner's motion must be denied.

## ORDER OF THE LOWER COURT

The Motion to Strike Order of October 20, 1964, appointing the Baltimore County Welfare Board legal guardian with the right to consent to adoption of the minor child, Madonna Peggy Hale, and Answer thereto having come on for trial, evidence having been taken in open court, and counsel having been heard, it is this 20th day of July, 1966, ORDERED by the Court that the Motion to Strike is dismissed with costs to the Defendant.